Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of		
Application of SBC Communications Inc., Illinois Bell Telephone Company, Indiana Bell Telephone Company Incorporated, The Ohio Bell Telephone Company, Wisconsin Bell, Inc., and Southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in Illinois, Indiana, Ohio, and Wisconsin	)	WC Docket No. 03-167

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COMMENTS OF AT&T CORP.

Pursuant to the Commission's Public Notice, DA 03-2344 (released July 17, 2003), AT&T Corp. ("AT&T") respectfully submits these comments in opposition to the application of SBC Communications, Inc., ("SBC"), Illinois Bell Telephone Company ("Illinois Bell"), Indiana Bell Telephone Company Incorporated ("Indiana Bell"), The Ohio Bell Telephone Company ("Ohio Bell"), Wisconsin Bell, Inc. ("Wisconsin Bell"), and Southwestern Bell Communications Services, Inc. ("SBCS"), for authorization to provide in-region, interLATA services in Illinois, Indiana, Ohio, and Wisconsin.

INTRODUCTION AND SUMMARY

Only SBC could hope to prevail on the theory that four wrongs make a right. SBC evidently hopes that by filing this four-state application while its prematurely re-filed Michigan

application is pending, the Commission will somehow deem approval en masse to be, not merely the path of least resistance, but the appropriate step to take.

The Commission will readily see, however, that SBC's four-state record precludes any such result. Throughout the former Ameritech region, SBC continues today to discriminate against and raise the costs of its competitors. It is vital to the success of local competition in these states that the Commission continue to insist that SBC eliminate this discrimination before it receives interLATA authorization under section 271.

SBC is compromising AT&T's ability to compete in each of these states in fundamental ways. SBC prevents AT&T from offering a voice/DSL package to Ameritech-state customers (such as the package AT&T offers in New York), because SBC has not established either the minimally adequate procedures or the TELRIC-based pricing needed to support line splitting. And SBC impedes voice competition in many ways, including through its discriminatory processes for provisioning new UNE-P lines over existing loops, its recurring OSS failures, and its chronic inability to provide complete, accurate, and timely wholesale bills and usage reports.

Just last month, for example, SBC uncovered new wholesale billing miscues that amounted to $4 million in combined over- and under-billing for AT&T alone. That is on top of more than $200,000 in NRC overcharges (in just two months, for three states) for provisioning that SBC never performed; $135,000 (for the same two months and three states) for unproductive truck rolls caused by SBC's process failures; tens of thousands of dollars for an incomplete solution to SBC's anticompetitive exploitation of the delays caused by its uniquely untimely system of billing-completion notices; collocation power overcharges that are nearly ten times

greater than the value of the power received; reciprocal compensation payments in Ohio that fail to compensate AT&T fairly and in accordance with this Commission's rules; and hundreds of thousands of dollars in cost and lost productivity to analyze billing errors and address ongoing disputes such as SBC's January claim that SBC undercharged AT&T on prior wholesale bills to the tune of $3.3 million. Trying to compete with SBC in the Ameritech states is proving to be death by a thousand cuts.

Many of these aspects of SBC's deficient performance are common to all the former Ameritech states. But some issues are unique to one or more of the four states here, while others, though common to all states, have emerged (or in some cases re-emerged) in recent weeks and are, by any legitimate measure, competitively significant. Overall, the record is a testament to the continuing instability of core systems and processes on which SBC's competitors are dependent if they are successfully to compete. SBC should not have rushed to file this joint application on the heels of its premature Michigan re-filing, and the application should be denied.

Part I explains that SBC does not provide reliable and effective support for ordering and provisioning line splitting. CLECs must be able to offer packages of voice and DSL services in order to compete effectively with SBC. AT&T recently confirmed its plan to rely upon such packages to compete with incumbents nationwide, but also confirmed that – unlike in New York – AT&T is not currently able to offer such packages in the former Ameritech region. Effective competition with SBC's voice/data packages depends on SBC's ability to provide nondiscriminatory access to the network elements that AT&T and other CLECs need to provide broadband service through line splitting arrangements. DOJ voiced serious concerns about line

splitting in *Michigan II* that "merit the Commission's careful attention," and these concerns apply to each of the four states here.[1] The record unequivocally confirms that SBC remains unable to offer CLECs adequate and reliable procedures that they need to use line splitting arrangements to compete effectively with SBC.

In particular, SBC employs *manual* processes to maintain the street address information for CLEC customers in the E911 database. The Commission has long recognized that manual processes greatly increase the risk of error, and SBC's reliance on manual processes for the CLEC customers in a database as critical to public safety as E911 is a stark and gross violation of its checklist obligations. Yet SBC has failed thus far even to address it. Because of the exceptionally anti-competitive and safety implications of leaving this issue unaddressed, the Commission should reject the application on this issue alone.

SBC's denial of reasonable access to line splitting goes well beyond its discriminatory maintenance of the E911 database. SBC's policy of refusing to permit a CLEC to re-use the same loop when converting from line splitting to UNE-P also is discriminatory. DOJ has rightly observed that this policy appears to "place the CLECs at a competitive disadvantage as against SBC when they seek to sell DSL service."[2] Indeed, SBC's policy serves only to increase the risk that customers who choose a CLEC for voice and DSL service will receive degraded service or be subjected to outages that result from SBC's – and not the CLECs' – inadequate systems support and mismanagement. Finally, SBC's versioning policies continue to prevent partnering CLECs from working together to submit coordinated line splitting orders.

[1] DOJ Eval. (*Michigan II*) at 11.
[2] *Id.* at 11-12.

Part II explains SBC's failure fully to rectify another indefensible policy related to CLEC access to the E911 database that affects both competition and consumer safety. SBC recently issued an Accessible Letter (dated July 15, 2003) that retracts much of its blatantly discriminatory policy requiring CLECs converting from UNE-P or line sharing to line splitting to perform all post-provisioning updates to the E911 database. But SBC dramatically underscored the fact that many serious questions remain about the nature of its E911 and competition policies in an even more recent Accessible Letter in California. This Accessible Letter purports to clarify the original Accessible Letter (that applied to all SBC 13 states), and it establishes an even more harshly discriminatory policy. Although SBC could easily confirm that it has no intention of adopting similarly discriminatory policies in other states, SBC thus far has refused to do so. It has chosen instead to sustain uncertainty by continuing to try to foist all E911 update responsibilities upon CLECs that use unbundled switching.

Part III demonstrates that SBC has not yet developed the ability consistently to generate accurate, timely, and reliable wholesale bills or usage reports. To this day, SBC has neither explained nor remedied the wholesale billing errors uncovered in its internal January billing data reconciliation. In January SBC unilaterally asserted that it had misbilled 37 CLECs in Michigan alone a total of $16.9 million – an admission of billing error that is unprecedented in scope. AT&T alone faces a demand from SBC for $3.3 million for which SBC claims it erroneously failed to submit a bill.

Yet SBC has not given AT&T, other CLECs, or this Commission even the minimal evidence that would be needed to permit a rational, non-arbitrary finding that SBC's new billing claims are correct. SBC has not set forth (1) the root causes of this massive error; (2) whether

and how SBC attempted to fix the root cause(s); or (3) whether there is any evidence to prove that SBC was successful at any such fix, such that there is some evidentiary basis to conclude that SBC's revised and recent billing statements (unlike the old admittedly flawed ones) are correct. This information and evidence are uniquely in SBC's hands. No CLEC can perform a root cause analysis of SBC's billing system errors, though a CLEC can point out fundamental errors and inconsistencies in SBC's attempted calculation of credits and debits, as AT&T has done. But so long as SBC fails even to attempt to set forth the requisite analysis and proof of the root causes of SBC's admitted and massive wholesale billing failure, this Commission can have no rational basis on which to make any finding other than that this checklist violation, which precluded approval of SBC's most recent Michigan application, continues unremedied to this day.

Beyond SBC's failure of proof, there is new, disturbing, and independently dispositive evidence that SBC's billing systems remain unstable and unreliable. On *July 16,* 2003, SBC informed AT&T of a number of new errors that SBC claimed to have uncovered that resulted in both underbilling and overbilling for monthly rate charges. The erroneous misbillings submitted just to AT&T for June amount in total to more than *$4* million. This evidence, without more, establishes that SBC's wholesale billing systems are unstable, unreliable, and inadequate. Yet AT&T has recently discovered evidence that SBC has improperly been billing AT&T for certain non-recurring charges that – for three states and two months alone – amounts to almost $235,000. And AT&T's ongoing review of SBC's March and May wholesale bills, as well as SBC's usage reports, confirms that SBC's bills and reports are pervasively inaccurate and incomplete.

No new entrant – particularly one in a market where margins are as narrow as they are in the local telephone markets – can compete effectively when its principal supplier cannot reliably issue complete, timely and accurate bills and usage reports. A CLEC needs accurate cost information to make effective and competitive decisions about, *inter alia,* the pricing to offer customers, the promotions for new customers, and the level of service and commitment to make to one state as opposed to another. That is why the Department of Justice has urged this Commission to review these billing issues carefully, and why this Commission has correctly insisted, both in the prior Michigan application and in other 271 decisions, that the BOC applicant demonstrate that it is providing CLECs with complete, accurate and timely wholesale bills and usage reports before its section 271 application is approved. SBC's billing performance in the Ameritech region is demonstrably inferior to its performance in other regions, and to the performance of other applicants who were deemed only barely to have met the checklist requirement. The Commission should deny the four-state application and insist that SBC first demonstrate that it is consistently providing CLECs with timely, accurate, and complete wholesale bills and usage reports.

Part IV demonstrates that SBC has not yet fully implemented its duties to set TELRIC-complaint rates for line splitting or for collocation, or to fully satisfy its reciprocal compensation obligations. First, none of the four states has made findings, and SBC has submitted no cost studies that could support findings that SBC has established rates for line splitting that comply with TELRIC. To the contrary, SBC's inflated line splitting NRC's preclude a finding of TELRIC-compliance and deter meaningful use of line splitting to compete with SBC's voice-data packages.

Second, in Indiana, Ohio and Wisconsin**,** SBC is exploiting its unique monopoly control over collocation space to charge CLECs not for the power they actually do use, but for the maximum power they could use in the space as is it is configured. This is not TELRIC; it is highway robbery. The Illinois Commission saw through this sham and insisted that SBC meter CLECs power usage, whereupon SBC's charges were massively reduced by several fold. SBC's unlawful power charges violate TELRIC and burden facilities-based competition, and are yet further evidence that SBC has not fully implemented its checklist obligations.

Third, SBC's reciprocal compensation rates in Ohio are in clear violation of this Commission's rules and orders. SBC should pay AT&T the tandem switching rate because the PUCO expressly found that AT&T's switches have the geographic reach of a tandem switch. By paying only the end office rate for traffic that SBC terminates using AT&T's tandem-equivalent switches, SBC is violating its obligations, under checklist item 13, to provide reciprocal compensation.

In Part V, AT&T demonstrates that SBC is not providing nondiscriminatory access to OSS, in several critical respects. Some of these defects have arisen recently and are being presented to the Commission for the first time; others are problems that AT&T thought – as it turns out, mistakenly – that SBC had resolved. Each of them is a competitively significant issue that SBC needs to fix before it can fairly be found to meet its OSS obligations.

First, SBC has failed to implement adequate processes for provisioning "new" UNE-P lines. As a result, AT&T has dispatched inside wire vendors to complete the provisioning only to find that the loop is not ready. SBC's defective processes cause outages, delays in service,

increased costs, substantial customer dissatisfaction and harm to AT&T's reputation, all of which seriously impedes AT&T's ability to compete effectively with SBC.

Second, SBC is arbitrarily enforcing a discriminatory limit (three) on the number of production IP addresses it will provide to AT&T. As a result, SBC is precluding AT&T from implementing a disaster recovery plan that would ensure AT&T's ability to continue providing service in the event of a disaster affecting its midwest-based servers, and is limiting AT&T in a way it would never limit itself.

Third, SBC's pre-ordering interfaces are once again imposing incomparably lengthy outages upon CLECs, thus shutting down competitors' access to SBC's vital OSS for hundreds of user hours, and confirming yet again that SBC has yet to stabilize its Ameritech-legacy OSS. Fourth, SBC is now attempting to win back customers lost to CLECs during the long period of delay while the CLEC awaits receipt of the billing completion notices (or "post-to-bill notifications"). A CLEC's inability to meet a customer's request, *e.g.*, for a feature change during this period, makes that customer particularly vulnerable to a win back, and illustrates once again how easy it is for SBC to exploit the competitive advantages of providing substandard OSS performance.

Finally, Part VI shows that SBC has not demonstrated that its performance data are accurate. This has been, and should remain, a matter of serious concern to this Commission. SBC's poor performance in the areas of billing and OSS, in particular, show that SBC has yet to stabilize critical support systems for CLECs, and is fully capable of backsliding at any point. Without accurate and fully tested performance reporting systems, SBC simply lacks the essential foundation that every prior successful BOC applicant has provided to ensure that CLECs and

state regulators alike have ready access to reliable and accurate measures of the BOCs performance.

Although numerous prior BOC applicants successfully completed 96-100 percent of the BearingPoint test prior to 271 authorization, SBC has not. This is yet further strong evidence that SBC's four-state application is premature. BearingPoint's ongoing, publicly commissioned, and independent test is far more rigorous, thorough, and reliable than the one that SBC privately designed with its financial auditor, Ernst & Young ("E&Y"). Not surprisingly, BearingPoint continues to find serious deficiencies in SBC's reporting systems that E&Y did not. The Commission should therefore insist that SBC, like prior applicants, successfully complete the BearingPoint test.

I. SBC DOES NOT PROVIDE NONDISCRIMINATORY ACCESS TO LINE SPLITTING, IN VIOLATION OF CHECKLIST ITEM TWO.

SBC systems for ordering and provisioning line splitting throughout the Ameritech region are discriminatory, anticompetitive, and indeed, impair CLECs' access to E911. Section 271(c)(2)(B)(ii) (checklist item two) requires SBC to provide nondiscriminatory access to unbundled network elements. The Commission has made clear that this obligation includes nondiscriminatory access to line splitting, which is defined as one or two CLECs using the UNE-platform and providing data services over the same loop, "where the competing carrier purchases the entire loop and provides its own splitter."[3]

AT&T and Covad have entered into a partnership in which AT&T will provide voice service and Covad will provide DSL service to AT&T's UNE-P customers. The ability to offer such voice/DSL combinations is vitally important if there is to be vibrant competition for

broadband services in the Ameritech states. AT&T and Covad cannot provide this voice/data combination, however, unless line splitting arrangements are readily available from SBC, in commercially reasonable volumes, as required by the Commission in the *Line Sharing Reconsideration Order*.

As explained below, however, SBC's systems for ordering and provisioning line splitting fail to satisfy the checklist in three respects: (1) SBC's processes for ordering line splitting are unreasonable and also fail to ensure that accurate street address information is maintained in the E911 database; (2) SBC's policy of refusing to permit a CLEC to re-use the same loop when converting from line splitting to UNE-P is discriminatory; and (3) SBC versioning policies prevent partnering CLECs from submitting line splitting orders.

A. SBC's Processes For Ordering And Provisioning Line Splitting Are Deficient And Impair Access To E911.

As AT&T has shown in detail in the *Michigan I* and *Michigan II* proceedings, SBC does not have sufficient processes in place to provision line splitting orders. In each of the Ameritech states, ordering line splitting involves a cumbersome process of multiple interrelated orders and manual handling. As AT&T demonstrated in the *Michigan I* proceeding, testing of SBC's processes for line sharing to line splitting and line splitting to UNE-P revealed that SBC's documentation was riddled with errors, required multiple manually-handled orders, and resulted in erroneous rejects and dial tone outages that for each scenario lasted several days.[4] SBC's

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[3] *Line Sharing Reconsideration Order*, 16 FCC Rcd. 2101, ¶ 19 (2001).

[4] *See* Ex Parte Letter from Alan C. Geolot to Marlene Dortch (FCC), dated April 11, 2003 (*Michigan I*); Ex Parte Letter from Alan C. Geolot to Marlene Dortch (FCC), dated March 28, 2003 (*Michigan I*); Ex Parte Letter from Alan C. Geolot to Marlene Dortch (FCC), dated March 19, 2003 (attaching Supplemental Declaration of Sarah DeYoung and Timothy M. Connolly) (*Michigan I*); *see also* Joint Declaration of Sarah DeYoung and Timothy M. Connolly (February 3, 2003) (*Michigan I*). AT&T hereby incorporates these ex parte letters by reference.

application makes clear that these cumbersome processes remain in place today in all of the Ameritech states,[5] and therefore SBC has not satisfied the checklist.

Since then, AT&T has discovered that SBC's systems for provisioning line splitting lead to a far more serious problem: SBC's systems do not ensure that customers' street address information in the E911 database is accurate. AT&T happened to discover this problem in Michigan when one of its customers with a line splitting arrangement made a 911 call and the PSAP did not retrieve accurate street address information for the customer. It was later determined that the PSAP in fact had the address of the SBC *central office* serving that customer. Fortunately, the incident that precipitated the 911 call was not a life-threatening situation.[6]

This deficiency in SBC's systems is a by-product of SBC's decision to treat line splitting as two separate services, an unbundled local switch port with transport and an xDSL capable loop, rather than as an integrated UNE-P product. SBC's methods and procedures assume that a standalone unbundled switch port is being used to provide a foreign exchange ("FX") service. SBC assumes that no one would seek emergency service from an FX number, since FX numbers do not correspond to a telephone set. SBC's systems, however, require its E911 database to contain a street address for every working telephone number, and therefore SBC simply assigns the central office address for these FX numbers as a default rule.[7]

These procedures are completely unworkable for line splitting arrangements and effectively deny nondiscriminatory access to E911 services. SBC has since indicated that it will

[5] *See* Chapman Aff. ¶¶ 82-89.

[6] *See* DeYoung/Henson/Willard Decl. ¶¶ 17-18; *see also* Cottrell/Lawson Affidavit ¶ 212 (acknowledging that AT&T brought this problem to SBC's attention).

change its methods and procedures so that representatives are aware that address fields for unbundled switch port orders associated with line splitting should not be populated with the SBC central office address. This solution, however, does not go far enough because it is entirely manual and leaves critical 911 information to potential human error. Indeed, because AT&T believes that 911 routing information is too critical to rely on this type of judgment call, AT&T has suggested that SBC differentiate the NC/NCI codes for unbundled switch ports used for foreign exchange and line splitting. Thus far, SBC has not agreed to this solution.[8]

SBC's manual processes for maintaining the accuracy of the E911 databases should *not* be acceptable to this Commission. The inherent deficiencies in these processes were abundantly confirmed in a recent ex parte letter in the *Michigan II* proceeding, in which SBC admitted that, out of the "approximately" 50 records affected in Michigan, "[a]ll but two of them had been corrected by June 17, 2003," and "the remaining two records were captured *in a second review* and were corrected by July 7, 2003," almost three weeks later.[9] As this ex parte letter confirms, SBC's manual processes are inherently incapable of providing the level of reliability that is necessary for a function as important to public safety as E911.[10]

It also bears emphasis that, although SBC has filed two Accessible Letters in the Ameritech region in recent weeks relating to its E911 policies, these Accessible Letters do not address this issue at all. SBC's July 8 Ex Parte Letter in the *Michigan II* proceeding gives the impression that SBC issued the June 20 Accessible Letter as a response to this issue (*see* July 8

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[7] *See* DeYoung/Henson/Willard Decl. ¶ 18; *see also* Cottrell/Lawson Aff. ¶ 214 ("SBC Midwest determined that the LSC methods and procedures ('M&P') instructed LSC service representatives to populate the central office location as the service address on service orders created for the provisioning of ULS-ST ports").

[8] *See* DeYoung/Henson/Willard Decl. ¶¶ 19-20.

[9] *See* Letter from Geoffrey M. Klineberg to Marlene H. Dortch, dated July 30, 2003, Attachment at 4 (emphasis added); *see also* Cottrell/Lawson Aff. ¶ 215 (SBC has corrected "approximately" 50 E911 records).

Ex Parte Attachment at 2), but in fact that Accessible Letter and the subsequent July 15 Accessible Letter address only changes in information that occur after the initial provisioning of the line splitting arrangement and are irrelevant to the issue discussed here.

SBC's markets thus remain closed to line splitting arrangements, and it has not satisfied the checklist. SBC's decision to treat line splitting as two unrelated offerings is entirely unreasonable, and directly results in these unacceptable manual processes for maintaining the accuracy of street address information in the E911 database. These deficiencies are extremely serious, and for this reason alone the Commission should reject SBC's 271 application.

B. SBC's Policy Prohibiting Reuse Of The Same Loop When Converting From Line Splitting to UNE-P Is Discriminatory And Unlawful.

SBC also maintains its discriminatory policy of requiring a CLEC to order an entirely new loop whenever it is converting a customer from a line splitting arrangement to UNE-P. Rather than simply changing out cross-connects using the existing loop that is already in service, SBC insists on the far more complicated and expensive process of disconnecting the existing loop altogether, which creates unnecessary service outages, risks service quality problems, and allows SBC to charge a substantial non-recurring charge for the establishment of a new unbundled loop. As the Department of Justice concluded in the *Michigan II* proceeding, "SBC's current processes appear to place the CLECs at a competitive disadvantage as against SBC when they seek to sell DSL service," because the CLECs' "customers could experience a significant interruption of voice service if they later choose to disconnect the DSL service," whereas "SBC's customers . . . do not suffer the same potential disability."[11]

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[10] DeYoung/Henson/Willard Decl. ¶ 21.

[11] DOJ Eval. (*Michigan II*) at 11-12; DeYoung/Henson/Willard Decl. ¶ 23.

In the *Michigan II* proceeding, SBC recently acknowledged the real reason for SBC's policy: its ordering and provisioning systems are designed in a way that generally *precludes* reassignment of the loop to the CLEC.[12] This is yet another manifestation of SBC's irrational insistence that line splitting is not UNE-P, but two separate and unconnected services (an unbundled loop and unbundled switch port with transport). Specifically, as SBC has recently conceded, SBC treats the loop in a line splitting arrangement as a "designed circuit" subject to special rules. Thus, when a customer is being converted from line splitting to UNE-P, "in order to be available for selection and assignment by LFACS, [the existing] xDSL-capable loop must be in the LFACS inventory of loops available for reuse and reassignment in order to be even considered."[13] As SBC has explained, however, "the xDSL-capable loop will *not* be available in the LFACS inventory of loops for mechanized assignment because it is a 'designed' circuit."[14]

In other words, SBC has designed its systems in a way in which no other BOC has done and, as a result, the existing loop cannot be reassigned to the customer. SBC's decision to design its ordering and provisioning processes as if line splitting were something other than UNE-P is

[12] In the *Michigan I* and *Michigan II* proceedings, SBC originally contended that its "no re-use" policy was justified because the CLEC "may have requested conditioning of [its existing] loop that could cause degradation in the quality of voice service provisioned over that loop." *See, e.g.*, SBC Suppl. Br. (*Michigan II*) at 30-31. This justification is simply nonsense, as AT&T and others have shown in the Michigan proceedings. The reality is that reusing the loop when converting a CLEC customer from line splitting to UNE-P would rarely present service quality issues, which is dramatically confirmed by the fact that SBC routinely reuses the loop when converting its own voice customers from a voice/data combination to voice only. AT&T itself would have no ability to make changes in the conditioning of the loop that would affect the quality of the services provided. SBC is the *only* carrier that could even theoretically make relevant changes to the conditioning of the loop, and could reasonably be expected to know at the time of conversion that it had performed such conditioning. *See, e.g.,* DeYoung/Henson/Willard ¶ 24.

[13] July 9 Ex Parte Attachment at 2.

[14] *Id.* (emphasis added); DeYoung/Henson/Willard Decl. ¶¶ 25-26. As SBC has conceded, the only way the customer could keep his existing loop under the existing process would be if (1) SBC received and processed an order to *disconnect* the existing loop (which would take five days to process, *see* July 9 Ex Parte (*Michigan II*) Attachment at 2), and (2) LFACS then happened to choose that same loop to be reassigned to the customer "based on LFACS's loop selection and assignment process." *See* July 7 Ex Parte (*Michigan II*) Attachment at 5-6.

wholly unreasonable. Treating line splitting as two unconnected services directly and foreseeable leads to anticompetitive burdens placed uniquely on CLECs.[15] And contrary to SBC's position, the Commission has made clear that line splitting is a UNE-P offering. *See, e.g., Line Sharing Reconsideration Order* ¶ 15, 19 ("incumbent LECs have an obligation to permit competing carriers to engage in line splitting using the UNE-platform where the competing carrier purchases the entire loop and provides its own splitter").[16]

Moreover, SBC's policy is blatantly discriminatory, because SBC's customers do not face the same burdens in analogous circumstances. When an AT&T voice/DSL customer wishes to drop DSL service, SBC's processes require the complete disconnection of service and the provisioning of an entirely new loop, which subjects that customer to unnecessary costs, the possibility of extended service disruptions, and the possibility of an inferior loop as a

[15] DeYoung/Henson/Willard Decl. ¶ 37. SBC's no loop reuse policy is simply one by-product of its unlawful refusal to treat line splitting as UNE-P rather than a new combination of standalone UNEs. This policy drives a number of unlawful positions, with the ultimate goal of depriving AT&T of new combinations altogether. In Illinois, for example, SBC has proposed contract language (which has been accepted in a proposed ALJ decision) that would require AT&T to perform its own combination work in every central office in which AT&T has established collocation. *See AT&T Communications of Illinois, Inc., TCG Illinois and TCG Chicago, Verified Petition for Arbitration*, Case No. 03-0239, Issue 15 (Ill. C.C., July 25, 2003) (ALJ recommended decision approving interconnection agreement provision stating that "AT&T is deemed able to make a combination itself" wherever "AT&T is physically collocated or has an on-site adjacent collocation arrangement"). But nothing in the text of Rule 315(c) limits the ILECs' duty to combine, "upon request," network elements that are "not ordinarily combined" to situations where a CLEC has established collocation. 47 C.F.R. § 51.315(c). SBC's refusal to provide new UNE combinations where the CLEC is collocated would also flatly violates the Commission's prior orders finding that a BOC does not meet its obligation to provide UNE combinations by offering to deliver separate UNEs to a CLEC collocation space. *Second BellSouth Louisiana Order* ¶¶ 164-70; *BellSouth South Carolina Order* ¶ 205. In particular, an ILEC may not insist that a CLEC combine elements exclusively through collocation – it must rather offer access at any "technically feasible point," *Second BellSouth Louisiana Order* ¶ 168, which would include, for example, allowing CLECs access to the ILEC's network. Further, as in those orders, SBC has never provided evidence "that it can provide access to network elements through collocation in a timely and reliable manner." *Second BellSouth Louisiana Order* ¶ 165; *BellSouth South Carolina Order* ¶ 205.

[16] DeYoung/Henson/Willard Decl. ¶ 27. Similarly, state commissions in the Ameritech region have also found line splitting to be UNE-P; for example, the Michigan PUC has explained that, "although some central office rewiring might be required to incorporate the data CLEC's splitter and DSLAM, the combination of UNEs used in the provision of voice service still exists after that rewiring is completed. Therefore, the voice CLEC's UNE-P service continues after the addition of the data service." *See In the Matter, on the Commission's Own Motion, to Consider Ameritech Michigan's Compliance with the Competitive Checklist in Section 271 of the Federal Telecommunications Act of 1996*, Opinion and Order, p. 12 (Dec. 20, 2001).

replacement. By contrast, when a SBC voice/data customer wishes to drop DSL service, SBC has conceded that it typically reuses the same loop with no commercially significant disruption.[17]

SBC's argument that its processes are not discriminatory misses the point entirely. SBC asserts that its LFACS system is nondiscriminatory because it applies the same standards when it selects an available loop for either SBC's own POTS service or for a competitor's UNE-P service.[18] Even if LFACS's assignment process is nondiscriminatory, that is irrelevant, because SBC concedes that when a CLEC is converting from line splitting to UNE-P, the CLEC's existing loop is not available for assignment in LFACS in the first place.[19]

In fact, SBC's processes ensure discriminatory treatment. When an AT&T customer wishes to convert from line splitting to UNE-P, that customer's existing loop will not even be theoretically available for assignment in the new UNE-P arrangement; SBC's processes require the assignment of a new loop. This would never happen to an SBC customer, because when an SBC voice/data customer wishes to drop DSL, SBC simply disconnects that customer's existing loop from the splitter (disconnects the HFPL) and reconnects it to the Main Distribution Frame on the switch. Indeed, as SBC has effectively conceded, when SBC is converting a customer from voice/data to voice only, SBC Simply reconfigures the existing loop. SBC's processes for

[17] *See* SBC Supplemental Brief (*Michigan II*) at 30; Chapman/Cottrell Reply Aff. ¶ 10 n.18 (*Michigan I*); SBC Ex Parte Letter from Geoffrey M. Klineberg to Marlene Dortch, FCC, dated March 17, 2003, App. A, pp. 18-19 (*Michigan I*); see also Chapman Aff. ¶ 88 n.47 (incorporating by reference all relevant pleadings from the Michigan proceedings).

[18] *See* Chapman Reply Aff. (*Michigan II*) ¶¶ 21-26.

[19] *See* DeYoung/Henson/Willard Decl. ¶ 28.

ordering and provisioning line splitting are therefore discriminatory and fail to satisfy the checklist.[20]

SBC also continues to assert that it policies are not discriminatory because when a customer wishes to convert from a CLEC voice/data combination to an *SBC* voice only service, the same limitations on SBC's provisioning systems would also preclude SBC from reusing the same loop.[21] The relevant comparison for purposes of the discrimination inquiry, however, is between the CLEC and SBC when converting from voice/data to voice only. As the Department of Justice noted in the *Michigan II* proceeding (DOJ Eval. at 11-12), customers will be reluctant to choose CLEC voice/data combinations over SBC's voice/data combinations if they know that choosing the CLEC will lead to more cost and service disruptions if they decide later to drop the DSL portion of the service. Indeed, contrary to SBC's suggestion, the fact that customers would suffer these disruptions regardless of whether they later switched to CLEC voice only or SBC voice only would only *increase*, rather than mitigate, customers' initial reluctance to choose the CLEC in the first instance.[22]

SBC has also suggested that a CLEC could, in effect, bypass SBC's discriminatory provisioning process by performing its own conversion in its collocation cage. Specifically, SBC asserts that a "CLEC could easily install a cross connect field when the equipment in the collocation arrangement is first installed."[23] SBC argues that this would allow the CLEC to

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[20] *See id.*

[21] Chapman Reply Aff. (*Michigan II*) ¶ 26.

[22] *See* DeYoung/Henson/Willard Decl. ¶ 20. *See also Complaint of AT&T Communications of Texas, L.P., against Southwestern Bell Tel. Co.*, PUC Docket No. 27634, Arbitration Award, p. 16 (July 17, 2003) ("[t]he Arbitrators find that Scenario A (line splitting to UNE-P) is analogous to scenarios in which voice customers of SBC Texas subscribe to SBC's Texas's affiliate for DSL service and then drop the DSL service, retaining SBC Texas voice only").

[23] Chapman Reply Aff. (*Michigan II*) ¶ 19.

perform its own conversion from line splitting to UNE-P by disconnecting the loop and port from the cross connect field and reconnecting them "by a simple cross-connect on its cross-connect field" as a voice-only connection.[24]

SBC's suggestion, however, is completely unrealistic. CLECs have already established their collocation cages and have already installed substantial equipment in them. As SBC effectively acknowledges,[25] a CLEC would have to incur very substantial costs to retro-fit its existing collocation cages by installing a cross-connect field. Installing a cross-connect field in existing cages would require the CLEC to reengineer all of the existing cabling and pre-wired equipment terminations in each cage, and virtually every existing connection between the CLEC and the ILEC would be disrupted during this process.[26]

More importantly, CLECs do not have the resources to provide efficient ongoing support for such cross-connect fields. Today, CLECs engineer their collocations to minimize the need to dispatch CLEC technicians; under SBC's proposal, the CLEC would be continuously dispatching technicians to its collocation cages to perform every individual cross-connect. SBC already has central offices that support a ubiquitous network of distribution plant and switches, and because of the enormous scale of SBC's network, SBC already dispatches technicians to its main distribution frames on a daily basis to perform a wide variety of provisioning operations. It

[24] *Id.*

[25] SBC acknowledges that installing a cross connect field "with working equipment" that has already been deployed in a collocation cage "could present some challenges," but SBC asserts (without further explanation) that these "challenges are not insurmountable." Chapman Reply Aff. (*Michigan II*) ¶ 19 n.20.

[26] DeYoung/Henson/Willard Decl. ¶ 32.

would make no economic sense for a CLEC to create an entire provisioning operation to support the relatively small number of connections in its collocation cages.[27]

Finally, SBC recently made clear in an ex parte letter in the *Michigan II* proceeding that SBC has made no commitment to change its discriminatory systems. SBC has indicated that it will consider changes to its systems, but these vague statements of possible fixes in the undefined future do not suffice for checklist compliance. SBC's ex parte letter states that implementing a non-discriminatory provisioning system would require "much work," that its "legacy systems" contain "limitations," and that it has asked certain CLECs to "participate in joint testing and collaboration" to determine "*if* the issues can be resolved."[28] In short, SBC does not commit to fixing the problem at all, much less fixing it by a defined date.[29]

The Commission should make clear in this 271 proceeding SBC's procedures do not satisfy either the Act or the checklist. In the *Michigan II* proceeding, the Department of Justice has urged the Commission to resolve these issues on the existing record, and it should do so here as well. *See* DOJ Eval. (*Michigan II*) at 11-12 & n.52 (noting that the SBC's policies implicate SBC's ability to provide non-discriminatory access to both line splitting and UNE-platform service and stating that "[t]he Commission should . . . determine *based on the record before it* whether SBC's processes" are discriminatory (emphasis added)).

[27] *Id.* ¶¶ 33-34.

[28] July 9 Ex Parte (*Michigan II*) at 4 (emphasis added). While SBC represented that it has asked AT&T to participate in such joint testing and collaboration, AT&T has received no such request from SBC to date.

[29] Moreover, SBC has separately made clear that the loops migrated under this scenario would no longer be subject to performance measures.

C. SBC Does Not Currently Have A Workable Means Of Processing Simultaneous Orders From Two CLECs In A Line Splitting Arrangement.

As AT&T demonstrated previously, SBC also maintains a discriminatory "versioning" policy, which requires that, whenever AT&T partners with a DLEC (such as Covad), the DLEC must use the same version of the EDI interface, down to the dot release, when it submits data orders using AT&T's OSS codes. AT&T has previously shown in detail that SBC's policy renders joint line splitting orders a practical impossibility, and effectively precludes any attempt by CLECs to partner with a third party to provide voice/data combinations through line splitting on any significant scale. The policy is also blatantly discriminatory, as SBC and its data affiliates do not face these limitations.[30]

SBC has recently acknowledged the seriousness of this problem and has promised to modify its ordering procedures to facilitate such partnering. SBC has proposed enabling an OBF defined field called "LSP Authorization" (or "LSPAuth") in its ordering systems; a DLEC such as Covad would populate the new LSPAuth field on the LSR with the AT&T company code to let SBC know that it was ordering on behalf of AT&T. With this new field, SBC could then work all of the orders even if the two CLECs were not on the exact same version of EDI. SBC's application confirms, however, that such changes will not be available until at least March 2004. As SBC indicates, "SBC stated its commitment to implement the LSR Agency process in the quarterly release currently scheduled for March 13, 2004, barring any unforeseen events."[31] Thus, SBC's application simply confirms what AT&T has already demonstrated: *i.e.*, that SBC currently has no reasonable processes in place to handle joint orders from a CLEC and DLEC

[30] *See* DeYoung/Willard Decl. (*Michigan I*) ¶¶ 136-157.

[31] Cottrell/Lawson Aff. ¶ 207.

and that SBC can do no more than commit to implementing a solution by March 2004, "barring any unforeseen events." Accordingly, such partnerships between CLECs and DLECs will continue to be infeasible for at least the next seven months, and therefore SBC's ordering processes currently do not satisfy the checklist.

II. SBC DOES NOT PROVIDE NONDISCRIMINATORY ACCESS TO E911 SERVICES AND DATABASES, IN VIOLATION OF CHECKLIST ITEMS SEVEN AND TEN.

Section 271(c)(2)(B)(vii)(I) of the competitive checklist requires SBC to provide "nondiscriminatory access to . . . 911 and E911 services." As the Commission has held, "section 271 requires a BOC to provide competitors access to its 911 and E911 services in the same manner that a BOC obtains such access, i.e., at parity."[32] The Commission has also held that a BOC must "maintain the 911 database entries for competing LECs with the same accuracy and reliability that it maintains the database entries for its own customers," which includes both "populating the 911 database with competitors' end user data" *and* "performing error correction for competitors on a nondiscriminatory basis."[33] Moreover, the Commission has independently established that incumbent LECs must provide nondiscriminatory access to "call-related databases," which includes the E911 databases.[34] Therefore, SBC is independently required to provide nondiscriminatory access to E911 databases under checklist item ten. 47 U.S.C. § 271(c)(2)(B)(x).

[32] *Michigan 271 Order* ¶ 256.
[33] *Id.*
[34] *UNE Remand Order* ¶¶ 403, 406.

SBC has not satisfied these checklist items. Although SBC has just issued a new Accessible Letter in the Ameritech region that modifies its previous discriminatory policy, serious questions remain as to the true nature of SBC's E911 policies.

As AT&T explained in its submissions in the *Michigan II* proceeding, SBC issued an Accessible Letter on June 20, 2003, establishing a broad policy that, whenever a customer is converted from either a UNE-P or line sharing arrangement to a line splitting arrangement, the CLEC must be responsible for all updates to the E911 database (through a Local Service Request, or "LSR") after the initial provisioning of the line splitting service. As AT&T demonstrated in detail, such a policy would impose prohibitive burdens on CLECs and, indeed, would threaten public safety.

Since those filings, SBC has retreated from that obviously unreasonable and anticompetitive policy. SBC filed a new Accessible Letter, issued on July 15, 2003,[35] in which SBC sought to reassure CLECs that they are responsible for updating the E911 database via LSRs only in the instance in which the CLEC physically rearranges or disconnects the UNEs used in the original line splitting arrangement (*i.e.*, when the CLEC moves the end user's physical service address by connecting the switch port to a new or different standalone loop). According to this new Accessible Letter, SBC will continue to be responsible for all other updates to the E911 database, such as those required by changes in the MSAG database.[36]

The positions that SBC has taken in its recent ex parte letters in *Michigan II* and in the July 15 Accessible Letter, however, as well as the recent Accessible Letter SBC issued in

[35] *See* DeYoung/Henson/Willard Decl., Exhibit 1 (July 15, 2003 Accessible Letter); *see also* Ex Parte Letter from Geoffrey M. Klineberg to Marlene Dortch, dated July 15, 2003 (*Michigan II*) (attaching July 15 Accessible Letter); Ex Parte Letter from Geoffrey M. Klineberg to Marlene Dortch (FCC), dated July 8, 2003 (*Michigan II*).

California and Nevada, continue to cast serious doubt on the true scope of SBC's policies and SBC's true intentions with respect to E911 updates. For example, SBC's contention that the June 20 Accessible Letter was intended only to address physical moves is questionable. CLECs have always understood that any physical address change would require the CLEC to issue an LSR, in order to keep all of SBC's systems updated (including the E911 database), and therefore it is difficult to see why SBC would have issued an Accessible Letter to "clarify" such a policy.[37]

Even more egregiously, the June 20 Accessible Letter established the broader, discriminatory policy for SBC's entire 13-State region, but the July 15 Accessible Letter retracted the policy *only* for the five Ameritech states, which remain the subject of pending Section 271 applications.[38] There would have been no reason to limit this clarification to these five states unless the June 20 Accessible Letter had in fact established a broader policy that SBC wanted to leave in place in the remaining states. After AT&T pointed this out in its *Michigan II* Reply Comments, SBC quickly issued identical Accessible Letters in the SWBT five-state region (Arkansas, Kansas, Missouri, Oklahoma, and Texas) and in SNET territory in Connecticut.[39]

SBC just issued a very different Accessible Letter in California and Nevada, however, which establishes a harshly discriminatory policy and dramatically underscores the uncertain nature of SBC's policies.[40] Indeed, earlier this year, SBC adopted in California an even broader

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[36] *See* July 15 Accessible Letter at 1.

[37] *See* DeYoung/Henson/Willard Decl. ¶¶ 40-41. Even so, SBC has never provided any LSR examples to instruct CLECs on the precise procedures to follow when their line splitting customers move.

[38] *See* July 15 Accessible Letter at 1.

[39] *See* DeYoung/Henson/Willard Decl. ¶¶ 42-43.

[40] *See id.*, Exhibit 3 ("California Accessible Letter").

and more onerous E911 update policy, which requires CLECs to perform all E911 updates for *all* UNE-P customers, not just customers served by line splitting arrangements.[41] The new California Accessible Letter, consistent with that policy, "clarifies" that when a CLEC converts from either UNE-P or line sharing to line splitting, "the 911 record for the UNE-P service will be *temporarily* retained in the E911/911 database."[42] The Accessible Letter further states that "[a] CLEC that provides a telecommunications service via a UNE Stand Alone Port purchase[d] from SBC-2STATE is treated as [a] facilities-based carrier for 911 purposes. Therefore, any such CLEC is responsible for updating the 911 Database for municipality ordered address changes."[43] Thus, the California Accessible Letter establishes the same discriminatory and unlawful E911 policy that SBC briefly imposed in the Ameritech states and hastily withdrew once it was raised in the pending 271 proceedings; indeed, the California policy is even broader because it applies to all UNE-P services.

Moreover, the California Accessible Letter raises serious questions about whether SBC will imminently impose the same policies in the Ameritech states. SBC has stated its intention to develop a consistent 13-State policy. Both the California Accessible Letter and the July 15 Accessible Letter purport to be "clarifications" of the same June 20 Accessible Letter – which confirms that SBC interprets the original June 20 Accessible Letter (which applied to all 13 states) as consistent with the discriminatory policies AT&T described in the *Michigan II* proceeding. In addition, SBC's recent retraction of its discriminatory E911 policy in the Ameritech states can itself be retracted; as the Accessible Letter states, SBC retains the right to

[41] *See id.* ¶ 44. Moreover, SBC's California policy requires line splitting CLECs to update the 911 database directly (instead of submitting an updated LSR) when the line splitting customer moves.

[42] California Accessible Letter at 1 (emphasis added).

[43] *Id.*

issue a new Accessible Letter establishing a new policy, including the California policy, throughout the 13-State region at any time.[44]

Equally troubling, in its recent ex parte letters in *Michigan II* and in the California Accessible Letter, SBC expressly defends the position that as long as a CLEC is using unbundled switching, such a carrier is a "facilities-based" carrier for purposes of E911. In other words, SBC contends that it has the legal right to foist its E911 update responsibilities on any CLEC that uses unbundled switching.[45]

The Commission should send the clearest possible signal, in this 271 proceeding, that SBC cannot use a function as important and as vital to public safety as E911 as a vehicle for imposing discriminatory and anticompetitive conditions on CLECs. The Commission should not approve SBC's application for this reason alone, because it cannot be in the public interest to reward SBC with approval of a 271 application while SBC is blocking local competition through means (exploiting its leverage over the E911 database) that are so harmful to the public interest. For all of these reasons, SBC's policies remain ill-defined and discriminatory, and as a result,

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[44] *See* July 15 Accessible Letter at 1 ("SBC Midwest 5-State reserves the right to make any modifications to or cancel the information set forth in this Accessible Letter. Any modifications to or cancellation of the information will be reflected in a subsequent accessible letter").

[45] *See* DeYoung/Henson/Willard Decl. ¶¶ 41-47. As AT&T has explained at length in the Willard *Michigan II* Declaration, that proposition is indefensible as both a practical and a legal matter. *See* Willard Decl. (*Michigan II*) ¶¶ 5-20. CLECs using unbundled switching do not have any practical or reliable means to access, unlock, and lock records in the E911 database, as switch-based carriers do. And SBC's legal claim is baseless. The Commission explained in the *Michigan 271 Order* that Section 271 requires a BOC to "maintain the 911 database entries for competing LECs with the same accuracy and reliability as it maintains the database entries for its own customers," including "populating the database with competitors' end-user data and performing error correction for competitors on a nondiscriminatory basis." For "facilities-based carriers," by contrast, "nondiscriminatory access to [E911] also includes the provision of unbundled access to Ameritech's 911 database and 911 interconnection, including the provision of dedicated trunks from the requesting carrier's *switching facilities* to the 911 control office at parity with what Ameritech provides to itself." *Michigan 271 Order* at ¶ 256 (emphasis added). *See also* AT&T Reply Comments (*Michigan II*) at 19-23.

SBC has neither satisfied the checklist nor demonstrated that approval of its application at this time would be in the public interest.

III. SBC DOES NOT PROVIDE CLECS WITH COMPLETE, TIMELY AND ACCURATE WHOLESALE BILLS AND USAGE RECORDS.

To comply with its obligations under item 2 of the competitive checklist, SBC must demonstrate that it "provide[s] competitive LECs with two essential billing functions: (i) complete, accurate and timely reports on the service usage of competing carriers' customers and (ii) complete, accurate and timely wholesale bills."[46] As the Commission has recognized, "[s]ervice-usage reports are essential because they allow competitors to track and bill the types and amounts of services their customers use."[47] Similarly, "[w]holesale bills are essential because competitive LECs must monitor the costs they incur in providing services to their customers."[48]

SBC still fails to comply with these important requirements. The evidence is overwhelming – from the magnitude of the checklist violation uncovered by the January reconciliation (which SBC has never demonstrated it has remedied), to SBC's ongoing errors in its March through May wholesale bills, to the instability in its billing systems reflected in other

[46] *Pennsylvania 271 Order* ¶ 13.

[47] *Id.*

[48] *Id.* As the Commission further explained, *Pennsylvania 271 Order* ¶ 23:

> Inaccurate or untimely wholesale bills can impede a competitive LEC's ability to compete in many ways. First, a competitive LEC must spend additional monetary and personnel resources reconciling bills and pursuing bill corrections. Second, a competitive LEC must show improper overcharges as current debts on its balance sheet until the charges are resolved, which can jeopardize its ability to attract investment capital. Third, competitive LECs must operate with a diminished capacity to monitor, predict and adjust expenses and prices in response to competition. Fourth, competitive LECs may lose revenue because they generally cannot, as a practical matter, back-bill end users in response to an untimely wholesale bill from an incumbent LEC.

recent and conceded SBC errors (such as a loop zone classification error that resulted in adjustments totaling over $4 million and improper NRC charges amounting to almost $235,000 for just a two-month period) – that SBC has not yet shown that it can consistently generate complete, accurate and timely wholesale bills. SBC also has yet to fix the important problem of providing CLECs with inaccurate UNE-P usage records, *i.e.*, records of use by customers who have disconnected their CLEC service. These problems fall outside the scope of what SBC's E&Y testing was designed to address, and SBC's other rationalizations for its poor billing performance also lack merit.

A. SBC Still Has Not Fixed Its Wholesale Billing Problems

SBC's problems generating complete and accurate wholesale bills are longstanding and continue to this day. SBC acknowledges that it uses the same billing systems in all five of its Midwest states (Illinois, Indiana, Ohio, Wisconsin, and Michigan).[49] The Commission rejected the application that Ameritech Michigan filed in 1997 in part because Ameritech Michigan could not provide accurate and timely bills.[50] SBC then withdrew its Michigan application earlier this year in significant measure because of "important" and "troubling" concerns about "whether SBC is currently providing wholesale billing functions for competitive LECs in a manner that meets the requirements" of Section 271.[51]

SBC has yet to fix its billing problems. SBC's most recent application seeks to trivialize, but ultimately cannot gainsay, the extraordinary magnitude of the errors in its billing systems that its January data reconciliation revealed. SBC has effectively defaulted on its obligation to

[49] Affidavit of Justin W. Brown, Mark J. Cottrell and Michael E. Flynn, ¶ 1 n.1 (July 17, 2003) ("Brown/Cottrell/Flynn Aff.").

[50] *Michigan 271 Order* ¶¶ 200-03.

identify, explain, and repair the root causes of that failure, and there is abundant new evidence that SBC's billing systems and procedures remain unstable and unreliable.

1. The January Reconciliation: The reconciliation revealed – by SBC's own admission – profound flaws in SBC's wholesale billing systems that denied CLECs vital access to complete, timely, and accurate wholesale bills and therefore violated the competitive checklist. By SBC's admission, adjustments were required on approximately 138,000 UNE-P circuits in Michigan (a state with fewer than 1 million UNE-P lines), confirming that a staggering number of UNE-P customers were incorrectly represented in SBC's systems. The problems, again by SBC's admission, affected 37 CLECs and required the adjustment (by SBC's estimate) of $16.9 million in previously issued bills. Given the level of errors in Michigan, it is not surprising that SBC has *never* publicly disclosed – and nowhere mentions in this current application – the total number of affected circuits for all CLECs in the four states that are subject of this application. For AT&T alone, however, more than 25,000 UNE-P circuits were added in the four application states as a result of the reconciliation and more than 9,600 UNE-P circuits were deleted.[52]

As a result of the reconciliation, SBC is attempting to bill AT&T an additional $3.3 million. However, AT&T has asserted numerous errors with respect to how SBC calculated the debit and credit adjustments, but SBC has failed to respond to the substance of AT&T's arguments.[53] For example, SBC has admitted to AT&T that the connect and disconnect dates for individual circuits on multi-line accounts are not contained in the ACIS database, and for that

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[51] *Statement of FCC Chairman Michael Powell On Withdrawal of SBC's 271 Application For Michigan*, Press Release (April 16, 2003).

[52] Joint Declaration of Sarah DeYoung and Shannie Tavares ¶ 36 ("DeYoung/Tavares Decl.").

reason SBC did not use the ACIS database to validate any connect or disconnect dates, including those with respect to single line accounts (which are contained in ACIS). Moreover, SBC admitted that it cannot in many cases substantiate connect or disconnect dates from any data source.[54] This deficiency in SBC's approach to the reconciliation is fundamental.[55]

In addition, SBC has failed to refute AT&T's arguments that its primary method for determining how far back to allow the credits due AT&T is flawed, and that SBC is not justified in limiting or capping AT&T's credits based on contractual limitations (since none of AT&T's interconnection agreements contain provisions that would operate to limit the duration of the credits).[56] With respect to debits, SBC has failed to refute AT&T's arguments that SBC's reliance on usage files to determine how far back to impose debits is inappropriate, and that SBC is not justified in commencing billing for phone numbers where SBC found the telephone number in ACIS but had no corresponding CABS entry or usage records.[57]

More significantly, however, SBC has failed to demonstrate – either in the application or elsewhere – that it has adequately responded to and remedied this compelling evidence of a major checklist violation. Specifically, SBC fails to ask or answer three fundamental questions: Has SBC identified all of the root cause(s) of this extraordinary volume of billing errors? What are the system changes that SBC has made to ensure that its wholesale bills, in the future, will be accurate? And what is the proof that those changes have been successfully made? SBC's failure to answer these questions directly and persuasively in its application is reason, in itself, to deny it

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[53] *Id.* ¶¶ 40-47.
[54] *Id.* ¶ 42.
[55] SBC also has only begun to address problems with particular telephone numbers that AT&T believes were not reconciled correctly. *Id.* ¶ 54.
[56] *Id.* ¶¶ 43-45.

because the Commission cannot make a reasoned finding that the checklist violation has been cured. Yet there is additional evidence that now confirms, beyond any reasonable doubt, that SBC continues to generate inaccurate wholesale bills.

2. Additional Evidence Of Continuing, Systemic Errors: In addition to the $3.3 million in additional charges related to the reconciliation, SBC systems continue to generate other errors that necessitate significant adjustments to its bills. For example, SBC has disclosed new errors that will be reflected in adjustments to the June and July bills. On July 16, 2003, SBC advised AT&T that it performed an investigation of monthly rate charges and that this investigation uncovered several errors causing both overbilling and underbilling.[58] For example, SBC advised AT&T that it erroneously billed AT&T the wrong loop rate in the Ameritech states due to a loop zone misclassification error. AT&T's review of its June bills shows that the debits and credits associated with this error totaled over *$4 million*.[59]

AT&T also recently discovered that SBC has been improperly charging AT&T the new installation non-recurring charge ("NRC") on certain "No Field Work" or "cut through" orders, even though SBC is not actually performing the field work that those NRCs are designed to recover.[60] AT&T personnel will now have to devote substantial resources to investigating and documenting claims for the improper billing of NRCs. AT&T currently estimates that in April

[57] *Id.* ¶¶ 46-47.
[58] *Id.* ¶¶ 22-25.
[59] *Id.* ¶ 22.
[60] *Id.* ¶ 26.

and May of 2003 alone, these improper non-recurring charges amounted to almost *$235,000* in Illinois, Ohio, and Michigan.[61]

Continual errors and restatements impose several direct and indirect costs on CLECs such as AT&T, which ultimately undercut their ability to compete effectively with SBC. Overbilling imposes a direct cost and underbilling errors require CLECs to accrue for amounts that they expect to be backbilled.[62] In addition, even assuming that the errors are eventually corrected, the time and resources required to identify and resolve these billing problems in itself imposes substantial costs on CLECs, which is precisely why SBC (and other RBOCs) are required to demonstrate the accuracy of their wholesale bills before they receive Section 271 authorization.[63] Finally, CLECs cannot compete effectively in the local telephone service market – which is a service business with very narrow margins – unless they know, with precision, what their costs are.[64] As matters now stand in the SBC Midwest region, CLECs simply have no way of knowing, month to month, what their costs are, or whether they are operating profitably or not. For this reason, SBC's continuing inability to provide the basic and essential information of an accurate wholesale supplier is seriously compromising the growth and vitality of local competition in the Ameritech states.

3. March – May Wholesale Bills: AT&T reviewed SBC's March wholesale bill for Michigan and identified over 28,800 telephone numbers that did not correspond to the customer

[61] SBC also recently notified the industry of yet another SBC billing error – this one related to SBC's line loss deficiencies – that impacted another 450 AT&T accounts.
[62] *Id.* ¶ 27.
[63] *Id.* ¶¶ 28-31.
[64] *Id.* ¶ 32.

records in AT&T's end user billing systems.[65] AT&T could not rule out the possibility that the discrepancy between SBC's bill and AT&T's records could have resulted, at least for some of these telephone numbers, from events unrelated to an error in SBC's billing systems. But the detailed review needed to rule out such potentially benign explanations for each of these orders was far too resource-intensive to be practical to do. Thus, AT&T chose categorically to eliminate from review all of those telephone numbers that might be susceptible to such an explanation, whether or not some benign explanation was in fact responsible for the inconsistency between SBC's bill and AT&T's records. On this basis, AT&T put aside nearly 26,700 numbers.

AT&T then conducted a detailed, manual, and resource-intensive analysis of the remaining 2114 telephone numbers. Of these, AT&T confirmed billing errors with 1941 – or 92 percent – of them. Specifically, AT&T identified 1619 instances of overbilling, resulting from SBC including on its March wholesale bill telephone numbers that do not belong to current AT&T customers.[66] These telephone numbers either have never been in AT&T's ordering system or no longer belonged to an AT&T customer during the period for which SBC had billed AT&T. In many instances, SBC is billing AT&T for telephone numbers for which AT&T does not receive Daily Usage File ("DUF") records. AT&T also identified 322 instances of underbilling on its March bills.[67]

[65] *Id.* ¶ 11; *see also* Joint Declaration of Sarah DeYoung and Shannie Tavares ¶ 7, Docket No. 03-138 (July 2, 2003) ("DeYoung/Tavares Mich. Decl.").

[66] DeYoung/Tavares Decl. ¶ 11; DeYoung/Tavares Mich. Decl. ¶ 8.

[67] DeYoung/Tavares Decl. ¶ 11; DeYoung/Tavares Mich. Decl. ¶ 9.

AT&T's labor-intensive review of SBC's March wholesale bill alone took more than two months to complete.[68] AT&T also reviewed the same telephone numbers on the May bills that it identified as instances of overbilling and underbilling on the March bills. This review revealed that 1527 (of the 1619) instances of overbilling and 177 (of the 322) instances of underbilling continue to be present on the May bills.[69] This follow-up review of the May bill demonstrates that SBC has not yet caught or managed to fix nearly all of the errors in its March bills.

Significantly, the Department of Justice ("DOJ") has agreed in the pending Michigan 271 proceeding that "the CLECs make credible allegations that they are continuing to receive wholesale bills from SBC that contain substantial inaccuracies."[70] As a result, DOJ has determined that "serious questions continue to be raised concerning the accuracy of SBC's wholesale billing" and that "[t]he record does not permit the Department to conclude that these concerns are insignificant or that they have been adequately addressed."[71] Thus, as was the case with SBC's earlier Michigan 271 application, DOJ "is not in a position to support [SBC's] application based on the current record,"[72] a conclusion that is inevitable given the magnitude of the underlying SBC wholesale billing problems and SBC's failure to address those problems between the time from withdrawal of its earlier application to the renewed application.

SBC has filed an *ex parte* letter in the pending Michigan 271 proceeding responding to AT&T's claims of overbilling and underbilling on the March wholesale bills.[73] In this *ex parte*,

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[68] DeYoung/Tavares Mich. Decl. ¶ 11.

[69] DeYoung/Tavares Decl. ¶ 12; DeYoung/Tavares Mich. Decl. ¶ 12.

[70] DOJ Mich. Eval. at 7.

[71] *Id.* at 2; *see also id.* at 6 ("persistent questions remain concerning billing accuracy").

[72] *Id.* at 2.

[73] *See* Letter from James C. Smith to Marlene H. Dortch, WC Docket No. 03-138 (July 28, 2003) ("SBC July 28 Ex Parte").

SBC asserts that "roughly 75 percent" of the discrepancies identified by AT&T are not due to errors by SBC.[74] AT&T has begun the time-consuming process of analyzing SBC's response, and its analysis is ongoing. AT&T's review has been hampered by SBC's failure to provide a summary that it has prepared of the spreadsheets in its response.[75] At this point, AT&T has completed its review of SBC's response to one of its exhibits, which identified 456 instances in which a telephone number appears on the CABS wholesale bill, but not in AT&T's end user billing system, is not (nor has it ever been) in AT&T's ordering system, and is not a telephone number for which AT&T receives Daily Usage File ("DUF") records.[76] AT&T has confirmed that it is not receiving any usage records for almost 400 of the telephone numbers on this exhibit for which SBC does not accept responsibility. As a result, SBC has not demonstrated that these telephone numbers belong to AT&T customers and that AT&T should be billed for these lines. SBC also accepts responsibility for 25% of the errors on the March bill.[77]

Thus, far from demonstrating that 75% of the errors are attributable to AT&T, SBC's analysis attempts to shift the burden of proving the inaccuracy of its billing systems to AT&T. Most of the instances in which SBC asserts that there is an AT&T error are instances in which AT&T's and SBC's systems do not agree, and AT&T has, in turn, asked SBC to undertake further investigation to determine why it would be that AT&T would not be getting usage for the vast majority of the telephone numbers on the exhibit. Thus, the record demonstrates the existence of unaddressed errors in SBC's billing systems.

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[74] *Id.* at 2.
[75] DeYoung/Tavares Decl. ¶ 13.
[76] DeYoung/Tavares Michigan Decl. ¶ 8.
[77] DeYoung/Tavares Decl. ¶ 15.

4. Refusal To Restate Performance Results: SBC has also failed to resolve the problems uncovered in the reconciliation in yet another respect. Despite acknowledging that PM 17 (Billing Completeness) was affected by the inaccuracies in the CABS database, SBC has yet to restate its performance results in light of the reconciliation. Although SBC claims that no such restatement is needed, its explanations are inconsistent and unpersuasive.[78] By refusing to restate these performance results, SBC is acting both to disguise one measure of the extent of its billing problems, and to escape potential penalties for its poor performance. This misconduct alone precludes SBC from fairly claiming to have resolved its reconciliation-related billing errors.

The record to date with respect to SBC's provision of wholesale bills thus shows unequivocally that the achievement of an accurate and complete wholesale bill remains a work in progress for SBC. AT&T's review of the March and May bills for Michigan confirms that SBC continues to make serious and pervasive errors in both accuracy and completeness. And SBC's glacial progress in addressing, let alone resolving, the errors and inconsistencies in January's data reconciliation further underscores SBC's failure to move swiftly to address the root causes of its erroneous bills and thereby justifiably make its billing problems a problem only of the past. Because SBC still fails to produce complete and accurate wholesale bills, it has not fully implemented its checklist obligations.

B. SBC Also Has Not Fixed Its Provision Of Inaccurate Usage Records

The core of SBC's problems with respect to UNE-P usage is simple. SBC provides AT&T with usage records for customers that have disconnected their AT&T service. While

[78] *Id.* ¶¶ 55-56.

SBC's prior Michigan application was pending, AT&T submitted examples of telephone numbers where AT&T received usage records for customers that even SBC's own records showed are no longer AT&T customers.[79] In its application, SBC has attempted to respond to the issues AT&T raised. SBC's responses serve only to confirm, however, that SBC has not taken the steps needed to eliminate its faulty provision of records for UNE-P usage.

In some cases, SBC has admitted to errors.[80] In other cases, SBC points chiefly to AT&T's incorrect assumption that SBC always used actual disconnect dates to calculate debits and credits.[81] Although AT&T would not have made this assumption if SBC had explained its dating methodology at an earlier date, SBC's argument here is beside the point. The important fact is that SBC fails to rebut AT&T's examples by providing the appropriate disconnect dates, and thus has failed to rebut AT&T's showing that SBC is sending AT&T usage records on disconnected customers.

SBC's erroneous assignment of usage messages presents a significant problem to AT&T and to CLECs generally. As the Commission has previously noted,[82] inaccurate usage reports impair a competitors' ability to compete, for without accurate and timely usage reports, competitors either (a) cannot accurately bill their customers for the usage their customers have incurred (thus depriving CLECs of significant revenue which, because of limits on customer back-billing, they may never recover); (b) bill their customers for usage their customers never incurred, thereby creating an erroneous bill that CLECs must divert resources to correct, creates

[79] *Id.* ¶ 48; Letter from Alan C. Geolot to Marlene H. Dortch, at 2-3, WC Docket No. 03-16 (April 14, 2003) ("AT&T April 14 Billing Ex Parte") (citing 187 such examples for a six-month period in Michigan and providing eight illustrative examples).

[80] Brown/Cottrell/Flynn Aff. ¶ 159.

[81] *Id.*

[82] *Pennsylvania 271 Order* ¶ 13.

customer ill-will, and damages the CLEC's reputation; or (c) incur costs for reviewing and confirming that SBC has once again sent usage records for a customer that the CLEC no longer has or has never had, which further diverts CLEC resources unproductively and hence raises entry costs.[83] In addition, SBC's erroneous assignment of usage messages further undercuts the reliability of the data reconciliation, because SBC used its own usage records to determine how far back to calculate debits.[84] Notably, these SBC-created errors cause problems for CLECs that SBC does not face, thus underscoring the inherently discriminatory impact of SBC's inadequate billing systems.

C. Third Party Testing Has Not Identified Or Enabled SBC To Fix The Root Causes Of SBC's Inaccurate and Incomplete Wholesale Bills

SBC's approach to its billing problems has not been to address the root causes of these problems by testing the accuracy of its bills and the underlying systems that generate them, or by engaging an independent consultant to do so. Instead, SBC asked Ernst & Young ("E&Y") to conduct additional testing of the extent to which data in various components of SBC's billing systems are inconsistent with each other. SBC now relies heavily upon this recent E&Y testing, as well as upon prior testing by BearingPoint, to claim that its billing systems satisfy the competitive checklist.[85] Neither E&Y's nor BearingPoint's testing supports its claims, however, because neither E&Y nor BearingPoint has ever tested the recent *accuracy* of SBC's bills.

1. BearingPoint testing. BearingPoint's testing provides no support for SBC's claim to have fixed its billing problems because BearingPoint conducted much of its testing of UNE-P order processing prior to the period that hundreds of thousands of orders were

[83] *Id.* ¶ 23; DOJ Mich. Eval. at 6-7.
[84] DeYoung/Tavares Decl. ¶ 52.

being held for processing by SBC in connection with the CABS conversion and well before the January 2003 data reconciliation. Thus, BearingPoint completed its testing long before the January 2003 data reconciliation and subsequent revelation of tens of millions of dollars in SBC billing errors.

Furthermore, BearingPoint's testing was not designed to uncover, and hence would not have discovered, any of the problems at issue in the data reconciliation. BearingPoint did not examine data connected with real customer orders but relied on orders generated by its pseudo-CLEC. Thus, it did not examine *any* of the 750,000 actual CLEC orders that were subject to SBC's "hold." Finally, BearingPoint has done no testing in any state after the data reconciliation to determine whether the problems identified in the data reconciliation have been resolved. It has not examined, for example, the stark conflicts between AT&T's records of which telephone numbers its customers have, and the telephone numbers for which it is receiving bills from SBC. For all of these reasons, the BearingPoint testing does not support SBC's claim to have overcome its problems generating inaccurate and incomplete wholesale bills.

2. E&Y testing. E&Y's testing also does not support SBC's claim to have resolved the billing issues that required SBC to withdraw its prior Michigan application. The prior Michigan application could not be approved, in part, because of concerns about the accuracy of SBC's wholesale bills that emerged in the aftermath of SBC's attempt to reconcile two sets of internal SBC records, the Ameritech Customer Information Systems ("ACIS") database and the Carrier Access Billing System ("CABS") database. The reconciliation itself was not the issue; rather, it was the revelation that SBC's billing errors had affected over 100,000

[85] SBC Brief at 81-86.

UNE-P circuits involving dozens of CLECs and generating $16.9 million in billing adjustments in Michigan alone. That revelation then led to further review of the accuracy of SBC's wholesale bills, which has uncovered yet more evidence that SBC's bills are inaccurate.

Nothing in E&Y's recent work was designed to, or had the effect of, reviewing or analyzing the substantive accuracy of SBC's wholesale bills. Rather, E&Y's sole and limited purpose was "to test the Company's assertion regarding the methodology and results of the [January data] Reconciliation, and the CLEC UNE-P billing adjustments that were issued as a result thereof."[86]

Thus, E&Y's testing, by design, did not address whether SBC is now generating complete and accurate wholesale bills. On this critical issue, E&Y is conspicuously silent. E&Y did not review the underlying accuracy of the database information.[87] It therefore did not address the root causes for the inconsistencies in the two SBC databases, or the root causes for inconsistencies between SBC's billing records and those that CLECs have maintained. Because E&Y has never addressed the core issue of whether SBC is generating accurate wholesale bills or usage reports, E&Y's testing provides no assurance that SBC has solved the problems that led to the inconsistencies in its databases or to the inconsistencies between its records and those of CLECs.

Of course, AT&T cannot identify the root causes(s) of SBC's continued inability to date to generate complete and accurate wholesale bills. The problems with the Michigan March bills

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[86] *See* E&Y Report of Independent Accountants on the Company's Assertion Dated June 17, 2003, at 1 ("E&Y Report") (Attachment A to the June 2003 Affidavit of Brian Horst, WC Docket No. 03-138).

[87] *Id.* at 4 n.5 ("For purposes of the Reconciliation, when there were discrepancies between ACIS and CABS, the ACIS data was assumed to be accurate and was utilized to update CABS. . . . [T]he underlying accuracy of the UNE-P circuit information within the ACIS database . . . was not within the scope of E&Y's engagement"); *id.* at 4

at least call into question, however, the underlying accuracy of the information contained in ACIS. And AT&T cannot help but notice that in states where SBC does not use ACIS, SBC has agreed to performance measurement standards that demand better performance from SBC than SBC is willing to provide in the SBC Midwest region.[88] SBC's decision not to ask E&Y to examine the accuracy of SBC's ACIS database is consistent with AT&T's concern about the quality of ACIS, and at the very least is further evidence that E&Y's recent testing does not provide a sufficient basis on which to conclude that SBC has addressed and resolved its problems generating complete and accurate wholesale bills.

In summary, E&Y's testing does not address, either directly or even by implication, the inaccuracies in SBC's Michigan March bill that AT&T's detailed review has confirmed. It also does not address the inconsistencies in the resolution of credit disputes that CLECs continue to have with SBC, or the inconsistencies between the January reconciliation and CLEC records that AT&T is now working with SBC to resolve. And E&Y concededly made no attempt to address discrepancies and inaccuracies in SBC's UNE-P usage reports. For all these reasons, the latest E&Y testing is not responsive to the problems that SBC must resolve before it can demonstrate that its billing performance meets the minimum that this Commission and the Telecommunications Act require.

D. None Of SBC's Other Arguments Concerning Billing Has Merit

Unable to dispute its inability, to date, to eliminate all or even most of the billing disputes that its inaccurate wholesale and usage bills have precipitated, SBC is forced to try to belittle

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n.7 ("the accuracy of the underlying information in each of those existing production data sources . . . was not within the scope of E&Y's engagement").

[88] DeYoung/Tavares Decl. ¶ 20.

their significance. It is now SBC's position that it need not attempt to take any further steps to correct the root causes of its billing problems. In SBC's world-weary view, the level of billing disputes with competitors in the four application states is no different than the level in other states where the Commission has granted SBC section 271 authorization.[89] Such disputes, SBC now maintains, "inevitably arise" and must simply be accepted as "a commercial fact of life."[90]

Certainly no competitor can reasonably expect perfection from SBC, and this Commission has made clear that a BOC applicant need not compile a record of perfect performance in order to obtain the Commission's approval of a section 271 application. Human errors, software glitches, and interpretive disagreements can arise in any business setting.

But SBC's degree of non-compliance in the area of wholesale billing is neither a minor matter nor business as usual. Rather, the record in the four application states shows pervasive inaccuracies that are indicative of fundamental flaws in SBC's systems and processes. SBC wants, but should not be permitted, to ignore the fundamental deficiencies in its Midwest Region billing systems that are responsible for the need for (and errors in) the January reconciliation, and for the continuing generation on a significant scale of wholesale and usage billing errors. The errors in the four application states and in Michigan are of a magnitude and gravity not present in any prior application, and reflect chronic deficiencies rooted in the inadequate systems that SBC inherited from Ameritech, and that SBC has not fully rehabilitated.

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[89] SBC Brief at 87; Brown/Cottrell/Flynn Aff. ¶¶ 130-31.

[90] SBC Brief at 87. SBC's assertion that the total current amount in dispute between it and CLECs is $30.4 million, *id.* at 88, also conveniently ignores the disputes of AT&T (and perhaps other CLECs) concerning the amounts relating to the data reconciliation, which for AT&T alone represents a debit of $3.3 million. *See* DeYoung/Tavares Decl. ¶ 57. More fundamentally, SBC has not made clear whether its calculation includes only billing disputes that are the subject of formal dispute resolution procedures invoked by CLECs. As DOJ recognizes, such a calculation would grossly underrepresent the magnitude of SBC's billing problems because CLECs such as AT&T currently

It is therefore SBC's decision to devote resources to explaining away its billing problems rather than to resolving them that distinguishes the four application states from the states in which the Commission has granted SBC 271 approval. SBC will not solve these problems unless the Commission, through the authority and responsibility Congress has given it in enforcing the requirements of Section 271, insists that SBC do so before the Commission grants SBC's 271 application. Because SBC has not demonstrated that it is providing CLECs with complete, accurate, and timely wholesale bills and usage reports, the Commission should deny SBC's 271 application.

IV. SBC'S PRICING OF LINE SPLITTING, COLLOCATION POWER, AND RECIPROCAL COMPENSATION DOES NOT COMPLY WITH TELRIC.

SBC has not yet fully implemented its duties to set TELRIC-complaint rates for line splitting or for collocation, or to fully satisfy its reciprocal compensation obligations.

A. SBC Has Failed To Establish Line Splitting NRCs That Comply With TELRIC Principles.

SBC's line splitting NRCs clearly fail to comply with TELRIC principles. SBC has no cost studies supporting these rates, no state commission has directly considered these rates in a TELRIC cost proceeding, and SBC only disclosed the rates in compliance filings and in response to discovery requests. The rates themselves are grossly inflated and based on processes that either have no connection to line splitting or are unnecessary procedures whose only function is to increase CLEC costs. In these circumstances, SBC has not shown – and cannot show – that these rates comply with TELRIC.

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have significant billing disputes with SBC that are not the subject of formal dispute resolution procedures. DOJ Eval (*Michigan II*) at 7-8 n.39.

The nonrecurring charges for line splitting must comply with TELRIC principles. Indeed, the Commission has long recognized that cost-based pricing for NRCs is critical to making competitive local telephone entry economically feasible. *See, e.g.*, *AT&T Communications*, 103 FCC 2d 277, 37 (1985) ("It is evident that nonrecurring charges can be used as an anticompetitive weapon to . . . discourage competitors"); Second Memorandum Opinion and Order on Reconsideration, *Expanded Interconnection with Local Telephone Company Facilities*, 8 FCC Rcd. 7341, 43 (1993) ("absent even-handed treatment, nonrecurring reconfiguration charges could constitute a serious barrier to competitive entry"). *See also* 47 C.F.R. § 51.507(e) ("[n]onrecurring charges . . . shall not permit an incumbent LEC to recover more than the total forward-looking economic cost of providing the applicable element"). In a section 271 proceeding, the incumbent LEC bears the burden of demonstrating that its NRCs are cost based and consistent with TELRIC principles.

SBC cannot meet that burden with respect to its line splitting NRCs. SBC provides no discussion of its line splitting NRCs in its application and has no cost studies supporting its application of NRCs developed for other work activities to line splitting. Moreover, there have been no findings by *any* of the four state commissions that the NRCs SBC seeks to impose in connection with line splitting are consistent with TELRIC. Indeed, in Ohio, SBC has yet to even specify line splitting NRCs. In the other three states, the charges have been developed unilaterally by SBC and were never disclosed publicly during cost proceedings to allow state commissions to review the charges in light of TELRIC. Instead, SBC has made these charges public in "compliance filings" in Wisconsin and Indiana rate proceedings after the conclusion of hearings and in response to discovery requests in the Illinois 271 proceeding. In light of the lack of cost studies and the failure of SBC to demonstrate that the NRCs reflect the work activities

associated with line splitting in connection with rate submissions during the state rate proceedings, SBC cannot rely on those state cost proceedings to claim that its line splitting NRCs somehow satisfy TELRIC requirements.[91]

SBC's backdoor approach to announcing these line splitting NRCs is not surprising, as the proposed rates are wildly in excess of appropriate TELRIC levels. The charges are based on SBC's cockeyed view of line splitting.[92] For example, when a CLEC seeks to add data service to a UNE-P customer's line, the only necessary work is the provisioning of cross connect cabling between the elements (the loop and the port) and the collocation cage where the equipment that splits the loop is housed. Rather than base its approach on this type of simple operation, SBC claims that to provision line splitting, it must "break apart" the existing UNE-P configuration and reconnect it by cross connection to the collocation cage where the splitter is located. This, SBC claims, entitles it to assess multiple charges for disconnecting the UNE-P, separate service order and installation charges for reconnecting the loop and port, as well as other types of charges. This policy is blatantly discriminatory, contrary to rulings of both this Commission and state commissions, and designed solely to increase CLEC's costs.[93]

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[91] DeYoung/Henson/Willard Decl. ¶¶ 55-57.

[92] *See generally* Section I, *supra.*

[93] DeYoung/Henson/Willard Decl. ¶¶ 51-52. The Commission's *Line Sharing Reconsideration Order* requires SBC to "permit competing carriers to engage in line splitting *using the UNE-platform* where the competing carrier purchases the entire loop and provides its own splitter." *Line Sharing Reconsideration Order,* ¶ 19 (emphasis added) The Commission explained that, as it stated in its Texas 271 order, an incumbent has a "current obligation" to allow "a competing carrier . . . to provide combined voice and data services on the same loop" (¶ 18) and "must provide the loop that was part of the existing UNE-platform as the unbundled xDSL-capable loop, unless the loop that was used for the UNE-Platform is not capable of providing xDSL service." *Id.* ¶ 19.

In its recent order in the Indiana TELRIC proceeding, approved February 17, 2003, the Indiana Utility Regulatory Commission concluded that: "Ameritech has no basis for refusing to provide line splitting in conjunction with UNE-P." Order dated February 17, 2003, IURC Cause No. 40611(Phase II), at pp. 75-76. The Public Utilities Commission of Ohio, in the most recent AT&T/SBC arbitration, also sustained the ability of CLECs to use line splitting with UNE-P, stating: "the Commission agrees that Ameritech has the obligation to permit competing carriers to engage in line splitting using the UNE-P where AT&T purchases the entire loop and provides its own

SBC's line splitting NRCs are further inflated by the fact that the NRCs used by SBC for some of the inappropriate activities are themselves not based on any cost studies but are proxies based on other UNE rates. For example, in Indiana, SBC has established an NRC called "Disconnect HFPL" that is based on its "Loop Service Order" NRC. This "Loop Service Order" has nothing to do with line splitting activities, is based on cost categories unrelated to line splitting, and recovers disconnect costs that are already included in various connection charges. Accordingly, SBC's reliance on these unrelated NRCs distorts line splitting NRCs and is totally arbitrary.[94]

The following common line splitting scenarios illustrate SBC's use of unnecessary and irrelevant procedures to inflate its line splitting NRCs.

UNE-P to Line Splitting: This scenario involves the addition of data service for an existing UNE-P customer. To provide this service, all SBC must do is run cross-connects between the facilities providing the voice service and those facilities providing the data service. SBC has not conducted a cost study that computes the TELRIC cost of installing the cross connects required to establish a line splitting configuration, adhering to its indefensible position that line splitting arrangements require that SBC "break apart" the UNE-P configuration.[95] The Texas state commission has, however, adopted cross-connect charges that reflect the appropriate work activities associated line splitting. The Texas cross-connect charges are $4.72 to connect

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splitter." *Entry on Rehearing* dated October 16, 2001, PUCO Case No. 00-1188-TP-ARB, at ¶ 15. Finally, in Wisconsin, the Public Service Commission of Wisconsin, also in the context of the most recent AT&T/SBC arbitration, confirmed AT&T's right to engage in line splitting using UNE-P. *Arbitration Award* dated October 12, 2000, WPSC Docket No. 05-MA-120, at pp. 79-80. *See also* Final Decision, September 20, 2001, PSCW Docket No. 6720-TI-161 (the Wisconsin TELRIC Docket), at p. 124.

[94] DeYoung/Henson/Willard Decl. ¶ 71.

[95] *Id.* ¶ 59. SBC does have line sharing-related cross-connect charges, but it is unclear whether these cross-connect NRCs reflect only those activities that would be required for this specific line splitting arrangement. *Id.* ¶ 60 n.32.

the loop to the CLEC's splitter and $6.91 to connect the voice portion of the loop back to the switch port, for a total cross-connect charge of $11.63. These rates are based on a review of the particular capability being provided and the specific activities required. As such, they provide an appropriate proxy for reviewing the reasonableness of SBC's line splitting NRCs SBC's regions, as the actual line splitting loop-connect work that must be performed will not vary from state to state.[96]

By comparison, SBC has proposed nonrecurring charges in its compliance filing of $68.84 in Wisconsin and $102.52 in Indiana. These charges reflect SBC's invalid assumption that it is entitled to configure line splitting by first completely disconnecting the current voice CLEC's UNE-P line and then reconnecting the voice line using standalone UNE elements. Thus, SBC's proposed NRCs for the UNE-P to line splitting scenario in these two states reflect charges for disconnecting the existing UNE-P line, placing new service orders, and installing a standalone loop and a standalone port. In each case separate loop and port connection charges are levied even though the end user is currently receiving voice service from those already combined elements. In this way, SBC treats line splitting as a new combination of standalone elements rather than UNE-P, with the goal of imposing additional costs on CLECs. This approach is totally inconsistent with orders of both this Commission and various state commissions.[97]

Line sharing to line splitting: Under this scenario, a customer may move its voice service from SBC to a CLEC and retain its current data provider (if data is provided by a

[96] *Id.* ¶ 60.

[97] DeYoung/Henson/Willard Decl. ¶¶ 61-63. The UNE-P to line splitting NRCs for Illinois are similarly flawed. *Id.* ¶ 64.

CLEC)[98] or move both its voice and data services. If the customer is moving only its voice service and is retaining its existing data provider, this change is simply a migration of voice service to the CLEC with no change in the physical configuration of the facilities used. The appropriate NRC in such a case is the UNE-P migration charge applicable in the four states.[99]

If the data carrier is also changing, then the cost of installation of two cross connects is also needed in addition to the UNE-P migration charge. In such a case, the appropriate NRC is the sum of these two cross connect charges ($11.67) and the UNE-P migration charge, for a total of approximately $11.69-$12.65, depending on the applicable UNE-P migration charge for each state.[100]

However, for this line sharing to line splitting scenario, SBC proposed NRCs totaling $87.29 for Indiana and $42.02 for Wisconsin. These rates are clearly inflated and arbitrary, and are again based on SBC's false premise that it may disconnect the existing UNE-P connection along with the data service and then provide a new standalone loop and a standalone port. In addition, contrary to TELRIC cost causation requirements, SBC seeks to impose these charges without regard to whether the customer changes its data service, even though it violates basic cost causation principles to impose the same NRCs on a customer that changes its data carrier (and requires installation of cross connects) and on the customer that keeps its data carrier (and requires only a UNE-P migration charge).[101] Moreover, as discussed above, SBC bases its NRCs on UNE charges that have no relation to line splitting, and such charges can in no way be

[98] In general SBC will not provide (xDSL) data service on a line served by a CLEC using UNE-P.

[99] DeYoung/Henson/Willard Decl. ¶¶ 66-67.

[100] *Id.* ¶ 68.

[101] By contrast, in Illinois, the NRCs are higher if the data carrier also changes, but Illinois, like Indiana and Wisconsin, applies inappropriate procedures that improperly inflate the NRCs. DeYoung/Henson/Willard Dec. ¶ 70.

deemed to be TELRIC compliant. Finally, SBC's various state NRCs are inconsistent in that SBC's Wisconsin NRCs include a standalone loop connection charge while Illinois's and Indiana's line splitting NRCs do not. It makes no sense that SBC would have to install a standalone loop in Wisconsin, but not in Illinois or Indiana to perform the exact same line splitting conversion. Given these flaws, SBC's line sharing to line splitting NRCs cannot be found to be TELRIC compliant.[102]

Simply put, SBC has failed to provide cost support for its line splitting NRCs and has sought to assess inflated NRCs based on inappropriate and irrelevant charges that seek to impose costs on CLECs. As SBC cannot establish that these line splitting NRCs comply with TELRIC, its application must be denied.

B. SBC Collocation Power Charges Violate TELRIC.

SBC also violates TELRIC Indiana, Ohio and Wisconsin by charging competitive carriers for power that they do not use in the collocation space that they have no choice but to rent from SBC.[103] Carriers that attempt to provide local service using their own facilities must collocate in SBC's central offices to access local loops and other bottleneck facilities. When collocating, competitive carriers have no choice but to buy electricity from SBC to power the equipment they use to access SBC's network facilities.[104] The maximum amount of power that can be delivered

[102] *Id.* ¶¶ 71-73.

[103] AT&T has not yet had the opportunity to squarely raise this issue before the Indiana and Wisconsin state commissions. AT&T has, however, squarely raised this issue before the Ohio state commission. Accordingly, this discussion focuses primarily on the Ohio recurring power charges for collocation spaces.

[104] Noorani Decl. ¶ 5.

depends upon how much power is "fused" to that space.[105] Competitive carriers typically have both a primary and backup fuse in order to ensure uninterrupted power.[106]

Critically, competitive carriers do not ordinarily draw the maximum amount of electricity available.[107] For example, while the primary fuse may be capable of delivering up to 100 AMPs, a competitive carrier will ordinarily draw only 80 AMPs.[108] Further, competitive carriers generally do not draw power from the backup fuse (otherwise there would be insufficient backup capacity).[109]

SBC's recurring power rate, however, charges competitive carriers for the *potential* power that can be delivered to their collocation space (*i.e.*, number of fused AMPs), rather than the amount of electricity *actually* consumed by competitive carriers.[110] This is a stark violation of the Commission's pricing rules. Basic TELRIC principles mandates cost-causation – *i.e.*, that competitive carriers should be charged only for costs that are directly attributable to their use of incumbent network facilities. *Local Competition Order* ¶¶ 620, 682; 47 C.F.R. § 51.505(b); *see also Local Competition Order* ¶ 685 (TELRIC require rates to reflect "the incremental costs that incumbents *actually* expect to incur in making network elements available to new entrants") (emphasis added). Here, SBC's recurring collocation power charges recover costs that are not caused by or attributable to competitive carriers – indeed, SBC's charges recover costs that SBC *never incurs* and that would never be incurred by an efficient carrier.

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[105] *Id.*
[106] *Id.*
[107] *Id.* ¶ 6.
[108] *Id.*
[109] *Id.* ¶¶ 6, 8-9.

The cost impact of SBC's overcharges for collocation power is dramatic. As fully documented in the confidential portion of the declaration filed herewith by Daniel Noorani, in June 2002 in Illinois, after the installation of meters, the cost of power declined by several fold compared to the method currently used by SBC in Ohio.

This patent TELRIC violation threatens the very facilities-based competition that the Commission seeks to foster. Competitive carriers are charged for more power than they consume, whereas SBC pays only for the power that it actually uses. This cost disadvantage creates a textbook opportunity for SBC to price-cost squeeze its rivals and prevent efficient entry.[111] SBC's Applications for Ohio, Indiana and Wisconsin thus violate Checklist Item 2 and should be rejected.

C. SBC's Reciprocal Compensation Payments to AT&T in Ohio Violate The Commission's Pricing Rules And The Act.

SBC also violates checklist item 13, § 271(c)(2)(B)(xiii), which requires BOCs to provide "[r]eciprocal compensation arrangements" at rates consistent with the pricing standard contained in the Act (§ 252(d)(2)). The Commission's rules implementing the Act's pricing standard require SBC to pay AT&T for traffic originated on SBC's network and terminated on AT&T's network at the rate SBC charges for tandem switching so long as AT&T's switches are capable of "serv[ing]a geographic area comparable to the area served by [Ameritech's] tandem switch."[112] In Ohio, however, SBC is permitted in some circumstances to pay AT&T the lesser end office rate, even though the PUCO found that "it is clear . . . that AT&T's switch will be

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[110] *Id.* ¶ 8. This issue was raised to the PUCO in the proceedings below, but that agency declined to address it on the grounds that it had already adopted power charges and that it saw no reason to revisit that issue in that proceeding. *Id.* ¶14.

[111] *Local Competition Order* ¶¶ 635, 675, 705.

[112] 47 C.F.R. § 51.711(a)(3); *see Local Competition Order* ¶ 1090.

serving a geographically comparable area" to SBC's tandem switch.[113] Because SBC's payments at the lower rate violate the Commission's rules and the Act's pricing standards for reciprocal compensation, SBC's petition must be denied.

Pricing of Reciprocal Compensation. Section 252(d)(2) of the Act provides that a state commission may not deem an incumbent LEC to be complying with its obligations regarding reciprocal compensation unless the rates paid for transport and termination are determined "on the basis of a reasonable approximation of the additional costs of terminating such calls." In implementing this section, the Commission's rules require incumbent LECs to charge rates established under TELRIC.[114] Further, as a "reasonable approximation" of TELRIC costs, a competitive LEC may "adopt the incumbent LEC's transport and termination prices as a presumptive proxy."[115] Thus, for equivalent switches, an incumbent carrier will pay a competing carrier the same per-minute rate that a competing carrier pays to an incumbent carrier.[116]

However, in determining what switches are equivalent, the Commission recognized that incumbent LECs and competing carriers design their networks differently, and that a CLEC cannot economically deploy a switch that serves only those customers located in the area covered by a single or even several incumbent LEC end offices and thus would not replicate the hierarchical tandem-end office network design employed by incumbents.[117] In particular, because of the enormous fixed costs of deploying a switch and because a CLEC will necessarily

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[113] Arbitration Award, *In the Matter of AT&T Communications of Ohio, Inc.'s and TCG Ohio's Petition for Arbitration of Interconnection, Rates, Terms and Conditions and Related Arrangements with Ameritech Ohio*, at 12, Case No. 00-1188-TP-ARB (P.U.C. Ohio June 21, 2001) ("*PUCO Arbitration Order*").

[114] *Local Competition Order* ¶ 1056.

[115] *Id.* ¶ 1085.

[116] *See* 47 C.F.R. § 51.711(a).

[117] *Local Competition Order* ¶ 1090.

serve only a fraction of the customers in each ILEC end office, a CLEC will not be able to provide switching at unit costs that are close to those of the incumbent's unless it deploys a single switch to serve an area that the incumbent would serve with a minimum of 10 or 15 end office switches.[118] A CLEC will therefore deploy a single switch in a central location, and use combinations of loops and of fiber rings or leased transport facilities to connect each of its customers to the centrally located switch.[119] In those circumstances, the CLEC's single switch and transport facilities "perform functions similar to those performed by an incumbent LEC's tandem switch."[120]

Thus, with respect to traffic from the ILEC's customers to the CLEC's customers which terminates on the CLEC's network, the Commission's rules provide that the CLEC may charge a rate equivalent to the ILEC tandem rate where the CLEC demonstrates that its switch "serves a geographic area comparable to that served by the incumbent LEC's tandem switch."[121] In later decisions, the Commission has made clear that its rule permits a CLEC to charge a rate equivalent to the ILEC tandem rate whenever it demonstrates that the CLEC's switch is "capable of serving a geographic area that is comparable to the architecture served by the incumbent LEC's tandem switch."[122] There is no requirement that the CLEC demonstrate that its switches actually perform functions equivalent to the ILEC tandem rate – the geographic area served by the switch is an "appropriate proxy" demonstrating that the CLEC switch functions like an ILEC

[118] *UNE Remand Order* ¶¶ 260-61.
[119] *See id*; *Local Competition Order* ¶ 1090.
[120] *Id.*
[121] 47 C.F.R. § 51.711(a)(3); *Local Competition Order* ¶ 1090.
[122] *See* Mem. Op. & Order, *CLEC Petitions Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc.*, 17 FCC Rcd. 27039, ¶ 309 (2002) ("*Virginia Arbitration Order*").

tandem.[123] Thus, once a CLEC has established that its switch will serve an area geographically comparable to the area served by the ILEC tandem switch, the Commission's rules require the state commission to authorize the CLEC to charge a rate equivalent to the ILEC tandem rate.[124]

The PUCO's Arbitration. In its arbitration of AT&T's interconnection agreement with Ameritech, the PUCO purported to apply the Commission's rules on reciprocal compensation, finding that "it is clear from the record that AT&T's switch will be serving a geographically comparable area to the area served by Ameritech's tandem switch."[125] Despite this finding, the PUCO allowed AT&T to charge the ILEC tandem rate only in some circumstances. Specifically, if "AT&T establishes direct interconnection trunks between its switch and Ameritech's end office switch, it will be compensated . . . at the end office compensation rate."[126] The PUCO apparently believed that the Commission's rules required carriers to pay each other an identical rate for transport and termination, even if functionally different facilities are used.[127] Because AT&T, in instances where it connects directly to the Ameritech end office, would pay Ameritech for transport and termination at the end office rate for traffic originated on AT&T's network, the PUCO concluded that the Commission's rules required AT&T to charge Ameritech only the equivalent end office rate, despite the fact that AT&T's switch (unlike Ameritech's end office switch) is serving a broad geographic area comparable to the Ameritech tandem.[128] Under this

[123] *Id.*; *Local Competition Order* ¶ 1090.
[124] *Id.*
[125] *PUCO Arbitration Order* at 12.
[126] *Id.*
[127] *See* Entry On Rehearing, *In the Matter of AT&T Communications of Ohio, Inc.'s and TCG Ohio's Petition for Arbitration of Interconnection, Rates, Terms and Conditions and Related Arrangements with Ameritech Ohio*, at 2-3, Case No. 00-1188-TP-ARB (P.U.C. Ohio Oct. 16, 2001) ("*PUCO Rehearing Order*").
[128] *Id.*

provision of the interconnection agreement, which AT&T has appealed,[129] Ameritech is permitted to pay less than the tandem rate, even though the PUCO's finding that AT&T's switches serve an area comparable to Ameritech's tandem entitles AT&T to charge a tandem rate for all local traffic terminated over that switch.

Ameritech Must Pay AT&T The Tandem Rate For All Traffic. Under a straightforward application of the Commission's rule, Ameritech is obligated to pay AT&T the ILEC tandem rate for all local traffic that it terminates on AT&T's network. The Commission's rule is clear, and provides that, whenever a CLEC switch meets the geographic comparability test, "*the* appropriate *rate*" for traffic terminated to that switch "is the incumbent LEC's tandem interconnection rate."[130] Nothing in the rule allows a state commission to establish two different rates, and the CLEC's entitlement to the tandem rate depends on the area that its switch is capable of serving, and not the type of ILEC switch to which it interconnects. And even though Ameritech's affiant now claims in this proceeding that "AT&T failed to demonstrate under 47 C.F.R. § 51.711(a)(3) that its switches serve a geographic area comparable to that served by Ohio Bell's tandem switches,"[131] the PUCO in fact made the opposite finding, concluding and then re-affirming that "AT&T has met the geographical comparability test."[132] Once it made the finding that AT&T switches serve an area comparable to that of Ameritech's tandem, the PUCO was required by the Commission's rule to award AT&T the tandem rate.

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[129] *See* Complaint, *AT&T Communications of Ohio, Inc.*, *et al.* v. *Ohio Bell Tel. Co.*, *et al.*, Case No. C2-03-472 (S.D. Ohio filed May 23, 2003).

[130] 47 C.F.R. § 51.711(a)(3) (emphasis added).

[131] Alexander Aff. ¶ 59 n.100.

[132] *PUCO Rehearing Order* at 2; *see PUCO Arbitration Order* at 12.

The PUCO's decision to limit AT&T's ability to collect the tandem rate was based on its erroneous view that rates for transport and termination must always be "symmetrical," unless the CLEC shows under TELRIC principles that its costs are higher.[133] But the Commission's presumption of symmetrical rates[134] by its terms applies to transport and termination "for the same services,"[135] and does not at all require that carriers always compensate each other at identically equivalent rates. Rather, it is the rate *structure* that is symmetrical: for transport and termination using a tandem or tandem-equivalent switch, the CLEC and ILEC charge the same tandem-based rate. Likewise, for transport and termination using an end office or end office-equivalent switch, the CLEC and ILEC charge a symmetrical end office rate.

The PUCO concluded, however, that where AT&T's switch is connected to an Ameritech end office, AT&T's tandem-equivalent switch was not entitled to compensation at the rate symmetrical to Ameritech's tandem. But the fact that AT&T's tandem-equivalent switch is connected with an Ameritech end office switch is irrelevant: under the Commission's rule, it is the area served by the CLEC switch, not the type of ILEC switch to which it is connected, that determines the rate that applies for transport and termination on a CLEC's network. Further, there is nothing unfair or asymmetrical about the fact that Ameritech is entitled to collect only the end office rate for traffic that AT&T terminates from its tandem-equivalent switch trunked to an Ameritech end office switch. Ameritech still collects a tandem rate for traffic that is terminated using its tandem switch, which is all that the Commission's rules require. This is further demonstrated by the fact that, if the CLEC's switch does not meet the Commission's geographic comparability test, the CLEC may collect only the end office rate from the ILEC –

[133] *See PUCO Rehearing Order* at 3.
[134] *See* 47 C.F.R. § 51.711(a).

even though the ILEC will collect a tandem rate for traffic that the CLEC terminates from its end office-equivalent switch to an ILEC tandem. Indeed, before the PUCO, Ameritech argued for this very result, and never suggested that it would violate the Commission's rule on symmetrical rates.[136] In fact, in arbitrations involving other CLECs, the PUCO properly applied the Commission's rule and awarded the tandem rate to the CLEC in all circumstances, once the CLEC proved that it met the test in section 711(a)(3). Thus, with respect to MCI's arbitration of an interconnection agreement in Ohio, the PUCO found that MCI's switch was capable of serving an area equivalent to Ameritech's tandem, and allowed MCI to collect the tandem rate for all traffic that Ameritech terminated over MCI's switches.[137] There is no basis to treat AT&T's switches under a different legal standard, and Ameritech therefore violates the checklist by paying only the end office rate for traffic that it terminates using AT&T's tandem equivalent switches.

V. SBC DOES NOT PROVIDE NONDISCRIMINATORY ACCESS TO OSS.

SBC does not provide nondiscriminatory access to OSS, in five respects. First, SBC's loop provisioning processes for "new" UNE-P lines are deficient, and as a result AT&T has dispatched inside wire vendors to complete the provisioning only to find that the loop is not ready. SBC's processes cause outages, delays in service, increased costs for CLECs, and also poison AT&T's relationship with its new customers. Second, SBC is unreasonably denying AT&T an IP address to be used for a disaster recovery plan. Third, SBC does not provide

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[135] *Id.* § 51.711(a)(1).

[136] Further, courts and other state commissions have applied the Commission's rules in this manner, allowing the ILEC to collect the tandem rate even though the CLEC, because its switch is not capable of serving a comparable geographic area, may collect only the end office rate. *See, e.g., MCI* v. *Michigan Bell*, 79 F. Supp. 2d 768, 791 (E.D. Mich. 1999).

[137] *See* Opinion and Order*, MCI Telecomm. Corp.* v. *Ohio Bell Tel. Co.*, Case No. C2-97-721 (S.D. Ohio March 21, 2003), appeal pending.

reliable pre-ordering information. Fourth, SBC does not provide billing completion notices (post-to-bill notifications) on a timely basis.

A. SBC's Loop Provisioning Processes For New UNE-P Installations Are Deficient And Result In "Unproductive Truck Rolls."

Throughout the Ameritech region,[138] SBC's loop provisioning processes are deficient for new UNE-P installations. AT&T has been experiencing a high number of "No Dial Tone" outages when attempting to complete the provisioning of such orders with AT&T's inside wire vendors. AT&T's investigation of these problems has revealed that SBC's loop ordering and provisioning processes are responsible for the vast majority of these outages, which cause AT&T to incur significant increased costs associated with the need for multiple inside wire dispatches and unwarranted NRCs, and has led to customer dissatisfaction and cancellations. SBC's processes are discriminatory and violate the checklist.

These problems occur in connection with "new" installations of UNE-P service – *e.g.*, additional lines or new service to an existing premise (*i.e.*, not new construction). On such orders, SBC has often already deployed an existing loop at that end user premises that is available for use but is not currently in service. In these circumstances, if no physical provisioning work is required – a determination that SBC is supposed to make[139] – SBC processes these orders as a "No Field Work" order (also commonly referred to as a "cut-through" order). Because SBC does not perform any physical work on these orders, under AT&T's

[138] AT&T discovered this problem after it filed reply comments in connection with SBC's Michigan application. The deficiency described herein exists in all of the Ameritech states and, indeed, has arisen in the other SBC regions as well.

[139] When AT&T sends an order for new UNE-P service to Ameritech, it has no way of determining whether that work will need field work or not. AT&T simply sends the order over as a "new" UNE-P order. Unlike the pre-ordering interfaces in the SWBT and Pacific Bell territories, the Ameritech pre-ordering interfaces do not enable a CLEC to determine whether the order will need field work or not.

interconnection agreements and other applicable tariffs, SBC is entitled to charge AT&T only the non-recurring charge associated with migration orders; it is not entitled to assess any non-recurring charges for new installations.[140]

When SBC processes such orders, it sends AT&T a Service Order Confirmation (SOC). As SBC readily acknowledges, when SBC sends a SOC to AT&T, the purpose of the SOC is to indicate that it has delivered a working loop to AT&T and that AT&T can then send its contractor to the customer's premises to complete the necessary inside wire work. AT&T has found in the Ameritech region, however, that the inside wire technicians have been unable to complete the provisioning of the service in a high percentage of cases, because when they arrived at the location they found that the loop had no dial tone. Inside wire vendors refer to this as an "unproductive truck roll" and charge AT&T an average of approximately $200 each time it occurs. Thus, AT&T is forced to issue a trouble ticket to SBC, and SBC then dispatches its own technicians to correct the problem and to establish a dial tone. After SBC has responded to the trouble ticket, AT&T must then re-dispatch its inside wire vendor to the location to perform the provisioning work that it was originally dispatched to perform.[141]

Subsequent analysis with SBC has indicated that most of these unproductive truck rolls are attributable to SBC's defective processes. SBC has confirmed in recent meetings with AT&T that many of these orders were incorrectly processed as a "cut-through" order. In other words, SBC issued a SOC without delivering a fully functional loop. Thus, after receiving a trouble ticket from AT&T, in order to establish dial tone, SBC had to dispatch its technicians to deploy a cross-connect (usually at either the NID or inside the building, although SBC has

[140] *See* DeYoung/Willard Decl. ¶ 16.

indicated that in some instances central office work was required). As one SBC representative put it in a recent meeting with AT&T, "we rolled the dice," meaning that their systems issued a SOC while essentially gambling that the loop that was assigned was a service-ready cable and pair.[142]

To make matters worse, AT&T has recently confirmed that SBC is in fact charging AT&T the new installation non-recurring charge on "cut-through" orders, even though it is not actually performing the work that those charges are designed to recover. The imposition of NRCs on cut-through orders clearly violates TELRIC principles. Moreover, AT&T's interconnection agreements with SBC make clear that SBC is not entitled to charge the NRCs associated with installation for currently combined elements; rather, SBC is limited to charges for the records changes associated with such orders.[143] AT&T estimates that in April and May of 2003 alone, these improper non-recurring charges amounted to almost $230,000 in Illinois, Ohio, and Michigan.[144]

These outages have a substantial anticompetitive impact. Such "unproductive truck rolls" cost AT&T $200 per occurrence, in addition to other costs. In April, May, and June, AT&T incurred almost $135,865 in expenses relating to unproductive truck rolls in Illinois, Ohio, and Michigan.[145] SBC also charges AT&T for unproductive truck rolls associated with some of these tickets. Furthermore, customer dissatisfaction is substantial, because service is not

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[141] *See id.* ¶ 18.

[142] *See id.* ¶ 21.

[143] *See id.* ¶ 22.

[144] *See id.* ¶¶ 22-24. These problems have also led SBC to report incorrect results for several performance measures. For example, SBC should have reflected each instance in which it did not deliver a working loop on the date the SOC was issued as a missed due date under PM 28, but has not.

[145] *See* DeYoung/Willard Decl. ¶ 23.

delivered on the promised due date, and the outage continues during the entire period in which SBC is correcting the problem so that AT&T can finish its work. Moreover, in many cases, the customer simply changes his mind and drops the requested service rather than continuing to wait for service to be provisioned. In such instances, AT&T suffers not only lost revenues for those customers, but injury to its reputation in the marketplace as well.

In short, SBC's processes on cut-through orders are discriminatory because they force AT&T to incur unnecessary expenses that SBC does not incur for itself and result in application of non-TELRIC based NRCs. SBC has the obligation to deliver a working loop at the time it issues the SOC on the order requesting such loop. Its "roll of the dice" unlawfully places the risk that the loop will require additional work on competitors, and imposes unnecessary and anticompetitive expenses on competitors. For all of these reasons, SBC's processes for ordering and provisioning new UNE-P lines is deficient, anticompetitive, and violates its checklist obligation to provide nondiscriminatory access to loops.

B. SBC Is Unreasonably Denying AT&T The Ability To Establish A Disaster Recovery Plan.

SBC is also unreasonably denying AT&T the ability to establish a disaster recovery plan for its operations in the Ameritech region, which is inconsistent with both its interconnection agreements and the public interest. Many of the servers that support AT&T's local consumer services in the Ameritech region (and elsewhere) are physically located in the Midwest. AT&T is in the process of establishing a disaster recovery plan for these services, which would shift this traffic to servers located in the Southeast. In order to accomplish this shift, however, AT&T needs, and has requested a special IP address established in SBC's systems.

SBC has flatly refused this request in the Ameritech region, on the grounds that SBC's policies and the Uniform and Enhanced OSS Plan of Record (POR) limit AT&T to three production IP addresses, and AT&T has already established three production IP addresses for business purposes. SBC's position is indefensible, because it effectively precludes AT&T from establishing a disaster recovery plan in the Ameritech region, in violation of those provisions.

SBC's refusal is discriminatory, anticompetitive, and starkly contrary to the public interest. If AT&T's Midwest servers were struck by a disaster, AT&T would effectively be unable to offer consumer services in the Ameritech region. With the additional IP address that AT&T is requesting, AT&T would be able to re-establish service using its Southeast servers within hours. Without it, AT&T might be unable to provide service indefinitely. SBC's refusal is discriminatory, because SBC would not deny such capabilities to itself. Moreover, the events of September 11, 2001, have underscored the strong public interest in adequate backup capabilities in the event of an emergency. For all of these reasons, SBC's position violates the checklist and is contrary to the public interest.

C. SBC Does Not Provide Reliable Pre-Ordering Systems.

In addition, SBC still has not provided CLECs with the stable and reliable pre-ordering interfaces that are essential to the development of meaningful competition. Because the pre-ordering information that CLECs need to place orders relating to SBC customers is available only from SBC itself, SBC effectively precludes competition for its customer base if CLECs are prevented from accessing pre-ordering information relating to SBC's customers.

The performance of SBC's CORBA pre-ordering interface belies its assertion that its OSS are "robust and reliable."[146] Far from being "consistently available when scheduled" (Application at 60), CORBA has frequently experienced outages since the third quarter of 2002.[147] Whenever such outages occur, AT&T customer representatives lose all ability to access critical pre-ordering information. The problems caused by the occurrence of these outages are exacerbated by their unpredictability. Since last October, substantial outages have occurred on CORBA for one or more months, followed by a relative "lull," and then a resumption of substantial outages for one or more months.[148] Most recently, in June and July 2003 – after outages had decreased for a few months from preexisting high levels – outages on CORBA once again increased significantly, reaching approximately the same levels of intensity as those experienced in October –December 2002 and February 2003. Some of these recent outages have ranged from *72 to 105* minutes in duration.[149] The outages have continued in August; one such outage lasted for *two hours and 21 minutes.*[150]

The substantial outages on CORBA are not isolated events, but instead illustrate the instability of SBC's systems. Because the problem has occurred in six of the last ten months, AT&T has no assurance that CORBA will function on a consistent and reliable basis. When outages do occur, AT&T is severely impeded in its operations. Hundreds and hundreds of user hours have been lost due to the inability of AT&T customer representatives to access the

[146] *See* Cottrell/Lawson Aff. ¶ 6.
[147] Willard Decl. ¶¶ 34-40.
[148] *Id.* ¶¶ 34-40, 43.
[149] *Id.* ¶¶ 44-47.
[150] *Id.* ¶ 40.

CORBA interface during outages. AT&T's costs attributable to the outages during the last year have been almost $100,000.[151]

SBC can offer no legitimate excuse for the outages on CORBA. In the regions of other RBOCs, and even in the regions of SBC's other BOCs, outages do not occur on pre-ordering interfaces with the same frequency and intensity of those occurring in the Ameritech region.[152] SBC's inability to provide stable pre-ordering systems in the Ameritech region thus constitutes significant discrimination, and a violation of its duty to provide nondiscriminatory access to its OSS.

D. SBC Fails To Provide Billing Completion Notices (Post-To-Bill Notifications) On A Timely Basis.

SBC also has not made – and cannot make – the required showing that "it provides competing carriers with order completion notices in a timely and accurate manner."[153] This evidentiary requirement reflects the Commission's recognition that such notices are "an important aspect of a competing carrier's ability to serve its customers at the same level of quality as a BOC."[154]

SBC, however, has fallen far short of meeting its obligation to provide timely billing completion notices ("BCNs") – which are otherwise known as post-to-bill notifications ("PTBs"). For example, SBC failed to send tens of thousands of BCNs to AT&T in January, more than 14,000 BCNs to CLECs in April, and more than 107,000 BCNs to CLECs during the

[151] *Id.* ¶¶ 44-47.
[152] *Id.* ¶¶ 35, 42 & Att. 4.
[153] *New York 271 Order* ¶ 187. *See also, e.g., New Jersey 271 Order* ¶¶ 93, 102; *Minnesota 271 Order* ¶ 20.
[154] *New Jersey 271 Order* ¶ 93.

May 14-22 time frame.[155] SBC has acknowledged that each of these problems was caused by various defects in its OSS.[156] Even if SBC's explanations of the immediate causes of these problems is correct, however, a major cause in the delays in the transmission of the BCNs is clearly the unduly long time that SBC's OSS takes to post service orders to its billing systems – a step that must be completed before a BCN is generated.[157]

SBC's failure to send BCNs in a timely manner significantly impedes the ability of CLECs to compete in the local exchange market. As the Commission has stated, "[D]elayed or missing BCNs can cause competitors to double-bill, fail to bill, or lose their customers."[158] For example, because it needs the BCN to confirm that an end-user's account has been transferred to AT&T, AT&T is effectively unable to send a subsequent change order on the customer's account until its receives the BCN for the LSR that it previously submitted. Thus, if an AT&T customer decides to change the service that it originally requested, but AT&T has not received a BCN on the original LSR, the change order would likely be rejected by SBC's systems. Given the frequent occurrence of change orders in the industry, the need to await receipt of a BCN – and the customer dissatisfaction that is bound to result from the delay – puts AT&T at a distinct

[155] DeYoung/Willard Decl. ¶¶ 55, 57-58; Cottrell/Lawson Aff. ¶¶ 126-129. SBC also delayed the transmission of nearly 10,000 BCNs to AT&T in January pending the completion of its billing "reconciliation" process. As SBC acknowledges, SBC provided no advance notification of this practice to AT&T. DeYoung/Willard Decl. ¶ 56; Cottrell/Lawson Aff. ¶ 125.

[156] DeYoung/Willard Decl. ¶¶ 55, 57-58. SBC, for example, stated in early April that its failure to deliver approximately 14,000 BCNs at that time was due to the failure of "a manual effort to transfer and load" a file of service orders, and to "a failure to capture posted service orders for some broadband types for PTB processing." Cottrell/Lawson Aff. ¶ 127. SBC states in its application that it did not deliver approximately 107,500 BCNs in May because of its "failure to properly document and test a software patch that was intended only to eliminate invalid 'mismatch' errors appearing on internal reports." *Id.* ¶ 128.

[157] DeYoung/Willard Decl. ¶¶ 60-61.

[158] *New Jersey 271 Order* ¶ 102.

competitive disadvantage, because SBC's own retail operations do not need to await a BCN before submitting a change order.[159]

In fact, the delays in the posting of service orders (and in the transmission of BCNs) provide SBC with the opportunity to take advantage of the very situation that it has created. During these delays, SBC's retail representatives are able to contact CLEC customers and urge them to switch back to SBC, because these representatives learn of the customer's migration in real time after the migration has occurred.[160] A new CLEC customer, irritated by the delays in the implementation of the changes that it has requested to its original service, may well decide to switch back to SBC.[161]

SBC's poor performance in transmitting BCNs has forced AT&T to develop – at a cost of tens of thousands of dollars – an automated "workaround" in order to reduce the competitive harm that would otherwise result from delayed BCNs.[162] This workaround effectively "stacks" change orders after receipt of a service order completion notice ("SOC"), but forces them to complete in the absence of a BCN after a certain period of time in the hope that the orders have, by that time, posted to SBC's billing systems.[163]

This workaround, however, does not eliminate the adverse competitive effects resulting from SBC's failure to deliver BCNs on a timely basis. First, even under the workaround, a large number of AT&T's change orders are still rejected, because (unlike other RBOCs, and unlike

[159] DeYoung/Willard Decl. ¶¶ 63-66.
[160] In fact, AT&T recently became aware of precisely that fact in Michigan. *Id.* ¶ 67.
[161] *Id.*
[162] *Id.* ¶¶ 70-71.
[163] *Id.*

SBC itself in Texas) SBC has refused to agree to post 95 percent of service orders to its billing systems within five days after transmitting a SOC in the Ameritech region.[164] Second, the large number of "stacked" change orders resulting from the workaround still translate directly into delayed provisioning of the change in service requested by the customer, and customer dissatisfaction. Third, SBC is still able to use the posting delay to its advantage by making "win-back" calls to AT&T's customers. Fourth, the "workaround" does not eliminate the lengthy delays themselves in the posting of service orders to SBC's billing systems by its OSS. Finally, the delays continue to impair AT&T's ability to bill its customers accurately sand to maintain current data on its customers.[165]

Although SBC asserts that it takes its obligation to provide timely BCNs "very seriously," its statements cannot compensate for its poor performance.[166] SBC's inability to send BCNs on a timely basis has impeded AT&T's ability to provide service with the same degree of timeliness and quality as SBC, jeopardized AT&T's relationship with its customers, and forced AT&T to implement "workarounds" that would have been totally unnecessary if SBC's performance matched its rhetoric. Because there is no evidence that SBC's own retail operations or SBC's retail customers suffer comparable delays, SBC's failure to provide timely BCNs is plainly a denial of nondiscriminatory access.

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[164] *Id.* ¶ 72. SBC has stated that it will not agree to a five-day period (even though it previously agreed to such a period in Texas) because of the unique design of the SBC OSS in the Ameritech region. *Id.* ¶ 61. Instead, SBC has advised AT&T that "the best it can do" is to commit to the transmission of 95 percent of BCNs within 10 days – an interval that is far longer than in any other RBOC's region (including Verizon, which has agreed to a two-day interval). *Id.* Thus, when AT&T sends a change order to SBC even when five business days have elapsed since the SOC was received, the risk remains that SBC's OSS in the Ameritech region will reject the order on the ground that the customer is not listed in the OSS as an AT&T customer. *Id.* ¶ 72.

[165] *Id.* ¶¶ 68-69, 73-74.

[166] Cottrell/Lawson Aff. ¶ 130; Willard Decl. ¶ 34-40.

VI. SBC HAS NOT SHOWN THAT ITS PERFORMANCE DATA ARE ACCURATE AND RELIABLE.

Finally, SBC has not met its burden to demonstrate that its performance reporting is reliable. The Commission has repeatedly recognized that performance data provide "valuable evidence" for determining whether an ILEC can provide access to OSS functions and network elements on a nondiscriminatory basis.[167] To satisfy its obligations under Section 271, an ILEC must demonstrate that its performance reports accurately track its performance and allow an appropriate determination of the adequacy of its OSS functions. To meet that standard, the "reliability of reported data is critical; the performance measures must generate results that are meaningful, accurate, and reproducible."[168]

SBC's performance data fall far short of satisfying these requirements. All four state commissions have engaged an independent test of SBC's performance data from BearingPoint, and BearingPoint has found that SBC still has passed only 48 to 57% of the BearingPoint test criteria. This performance is remarkably poor, in light of the fact that other BOCs have consistently met 96-100% of the same or similar criteria in winning 271 authority in other proceedings. In an attempt to evade these findings, SBC has hired Ernst & Young (E&Y) to perform a competing audit, which has been far less rigorous and comprehensive than BearingPoint's testing. Not surprisingly, SBC relies on E&Y, and urges the Commission to ignore BearingPoint.

Contrary to SBC's claims, however, the Commission cannot lawfully ignore the evidence before it. BearingPoint has found numerous important deficiencies in SBC's data that E&Y did

[167] *Connecticut 271 Order*, Appendix D, ¶ 7; *Michigan 271 Order* ¶ 22.
[168] *Kansas/Oklahoma 271 Order* ¶ 278.

not find (and, indeed, could not have found). E&Y's competing audit is limited in scope and flawed in design, and it does not answer or eliminate the myriad issues raised by the BearingPoint audit.

A. The E&Y Audit Does Not Demonstrate That SBC's Data Are Reliable.

SBC urges the Commission to ignore the BearingPoint tests altogether and to find that SBC's performance data are accurate and reliable based solely upon the E&Y audit, "standing alone."[169] SBC similarly attempted to discredit the BearingPoint analysis in the Michigan 271 proceedings, and those arguments have been thoroughly refuted by the commenters, including the Department of Justice.

For example, the Justice Department correctly rejected SBC's contention that the E&Y audit should be given greater weight than the BearingPoint merely because the BearingPoint test remains ongoing. The Justice Department found that the BearingPoint "state sponsored audit is an important source of information"[170] that is critical in assessing the integrity of SBC's performance data. As the Justice Department explained, "the BearingPoint metrics audit and its findings to date should not be ignored or minimized simply because the audit is not progressing as fast as SBC desires," particularly when "SBC itself appears to be responsible for some of the delays in completion of BearingPoint's audit."[171] As a consequence, SBC "should not be

[169] SBC Application at 72.

[170] DOJ Eval. (*Michigan II*) at 13.

[171] *Id.* at 13 n. 63 (noting that "the data integrity and metrics replication portions of the BearingPoint audit were significantly delayed by SBC's inadequate documentation of its performance measures and the associated business rules, without which one cannot determine the meaningfulness or accuracy of reported metrics").

permitted to bootstrap its position by citing the incomplete nature of the audit as grounds for downplaying the audit's findings to date."[172]

Similarly, the Justice Department "share[d] CLEC commenters' concerns that SBC is mischaracterizing BearingPoint's processes and findings."[173] In that regard, SBC had contended (as it does here) that BearingPoint's "Not Satisfied" findings are essentially meaningless because they are merely "interim findings" which "deserve less weight than a final report." Although SBC insists that a "Not Satisfied" finding in the BearingPoint audit does not denote the existence of a data error or problem, SBC's assertion is belied by BearingPoint's own report, which states that "a 'Not Satisfied' means that '[t]he norm, benchmark, standard and/or guideline was not met.'"[174]

In all events, SBC cannot properly rely on the E&Y audits as proof of the reliability of its data because the E&Y audits are nothing more than an improper end-run around the BearingPoint tests. Despite SBC's claims, SBC's retention of its own financial advisor to conduct a separate audit as an end-run around the State-commissioned BearingPoint audit raises substantial questions regarding E&Y's objectivity. SBC retained E&Y unilaterally and without the approval of any of the state commissions. The Texas Public Utility Commission has expressed concerns regarding E&Y's objectivity in conducting the Section 272(d)(2) biennial audit of SBC's operations in Kansas, Oklahoma and Texas.[175] Moreover, according to news reports, the SEC "in a rare move [is] seeking to have Ernst & Young suspended from accepting new corporate clients for six months because . . . Ernst & Young's internal controls are

[172] *Id.* at 13-14.
[173] DOJ Eval. (*Michigan II*) at 14 n.64.
[174] *Id.* 13-14.

inadequate to prevent its auditors from becoming too cozy with corporate clients."[176] In such circumstances, this Commission cannot find that E&Y had the necessary objectivity in conducting its testing on SBC's behalf.[177]

Furthermore, SBC developed the scope and parameters of the E&Y audits in secrecy, and the testing procedures were agreed to by SBC and E&Y without CLEC input.[178] The BearingPoint Master Test Plan, by contrast, was the result of an open, collaborative process in which the CLEC industry participated. In addition, the BearingPoint test findings are open and available for public view on the website and are regularly updated; E&Y's work, by contrast, has been conducted privately, and E&Y's underlying documentation is not available to the public. Indeed, the PUCO, noting that it had had no input into the design of the E&Y audit, expressly rejected SBC's assertion "that the E&Y audit provides increased assurance in regard to the integrity, reliability, and accuracy of [SBC's] commercial data "[179]

In sharp contrast to E&Y's approach, BearingPoint is conducting a rigorous and comprehensive test, and, as a result, it continues to uncover significant defects in SBC's performance monitoring and reporting processes that E&Y's more narrow test has overlooked. In response, SBC contends that BearingPoint's tests are limited to certain months, and "more recent corrective actions" taken in response to issues raised by E&Y in some instances are not reflected in the older data that BearingPoint reviewed. As shown in more detail below, E&Y's audit did not identify or address any number of defects that BearingPoint has uncovered during

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[175] Moore/Connolly Decl. ¶ 33.
[176] "SEC Wants Ernst & Young Suspended From New Cos. for 6 Mos" (Dow Jones Newswires, May 30, 2003).
[177] *See* Moore/Connolly Decl. ¶¶ 33-34.
[178] *Id.* ¶ 32.

the course of its audit. Furthermore, E&Y's testing procedures were limited and flawed, and therefore E&Y's audits provide no assurance that SBC's purported corrective actions have resolved the data defects that E&Y did, in fact, identify during the course of its audit. And because BearingPoint's testing is incomplete and BearingPoint has not yet determined whether SBC's purported corrective actions are effective, SBC's claims regarding the efficacy of its corrective actions are premature, unsupported assertions which should be accorded no weight.

SBC also asserts that any other "differences" between the E&Y and BearingPoint test findings are due to the different "materiality" standards that both auditors used. In that connection, during its audit E&Y determined that an error would be considered material if it would change the original reported result by five percent or more, or if the error, when corrected, would cause the original attainment/failure result to reverse. E&Y applied this materiality standard at the sub-measure level. In contrast, during its audit, BearingPoint identifies all discrepancies in reported values. But SBC's implication that the BearingPoint Michigan test requires perfection is flatly wrong. Although BearingPoint identifies all discrepancies in reported values, in determining whether SBC has satisfied the test criteria for performance measurement groups in the PMR4 and PMR5 tests, BearingPoint uses a 95% benchmark standard. The fact that other BOCs in Section 271 proceedings have satisfied between 96 and 100 percent of similar or more stringent BearingPoint test criteria belies SBC's assertions that the test criteria are too exacting. Furthermore, E&Y's audit examined only March-May 2002 results, and BearingPoint has uncovered defects in data generated outside the period covered in

[179] *See id.* ¶ 36. PUCO Report and Evaluation for SBC Ohio's Entry into In-Region InterLATA Service Under Section 271 of the Telecommunications Act of 1996, June 26, 2003, App. A, p. 28.

E&Y's review that would have constituted material errors even under E&Y's materiality standard.[180]

The state-approved BearingPoint tests conducted in all four states are far from complete, and the test results reveal that SBC has passed only 48 to 57% of the applicable test criteria in the four states. Indeed, its performance is equally abysmal in all four states: SBC has not yet passed 43% of the test criteria in the Illinois BearingPoint test; it has not passed 52% of the applicable test criteria in Indiana; it has not yet passed 43% of the applicable test criteria in Ohio; and it has not yet passed 43% of the applicable test criteria in Wisconsin.[181]

SBC's performance during BearingPoint's PMR tests in the four states is substantially worse than those of BOCs that have received 271 authorization in states where BearingPoint has conducted similar PMR tests; in other states where BearingPoint has conducted similar PMR testing and the BOC has obtained 271 approval, the BOC passed *96-100 percent* of the test criteria in the PMR tests.[182] In view of the PMR test results of other BOCs that have obtained 271 approval, this Commission must not and should not lower the compliance bar and approve SBC's application on the basis of the current record.

In short, dismissing BearingPoint's extensive findings of errors in SBC's performance measure reports, as SBC urges, would be arbitrary. *See* DOJ Eval. (*Michigan II*) at 14 ("the Commission should, however, use great care before dismissing, based solely on the findings of E&Y's review, problems identified by BearingPoint's findings or marketplace performance data"). The Commission should not rely on the E&Y audit as proof of the accuracy of its data.

[180] *See id.* ¶¶ 44, 135.
[181] *Id.* ¶¶ 72-76.
[182] *See Id.* ¶ 77.

B. BearingPoint Has Found Numerous Errors That E&Y Did Not.

The BearingPoint PMR1 Test Continues To Show Deficiencies In SBC's Technical Documentation. The BearingPoint PMR1 test has uncovered substantial deficiencies in SBC's performance monitoring and reporting processes, including significant deficiencies in the technical documentation underlying SBC's performance reports, that the E&Y test has not found. These deficiencies are discussed in Exceptions 187 and 188 of the BearingPoint test, which currently remain open in all four states. The most recent version of these exceptions (Version 5, which was issued on July 11, 2003) reveals that, as BearingPoint's testing has progressed, it has continued to find that SBC's technical documentation is plagued with errors.

In Exception 187, the PMR1 test reveals defects in the calculation logic underlying SBC's performance results – defects that E&Y did not detect and could not have detected during the course of its audit. Indeed, the E&Y audit was not even designed to address deficiencies in SBC's technical documentation. In Version 5 of Exception 187, issued on July 11, 2003, BearingPoint continues to report that, as of July 10, 2003, the step-by-step logic that SBC uses to calculate its performance results is inaccurate with respect to nine measurement groups and 16 measures – including a number of measures that SBC concedes are key measures – which the E&Y test did not uncover.[183]

For example, SBC has admitted that Performance Measurement 18 (Billing Timeliness (Wholesale Bill)) is a key measure,[184] but BearingPoint has found that SBC's calculation logic

[183] *See id.* ¶ 95. The nine measure groups and 16 measures are: Billing (PM 18); Collocation (PM MI 4); Directory Assistance Database (PMs 110, 111, 112, and 113); Maintenance and Repair (PMs 54, 54.1); NXX (PMs 117, 118); Other (PMs MI 9, MI 11); Poles, Conduits and Rights of Way (PM 105); Pre-Order (PM 1.1); and Provisioning (PMs 56, 56.1).

[184] *See* SBC July 10 *Ex Parte*, Attach. Dv2 at 2 (listing PM 18 as a key measure).

for Performance Measurement 18 is inaccurate.[185] Similarly, SBC's calculation logic for four measures in the Directory Assistance Database measurement group is inaccurate, including Performance Measurement 110, which SBC admits is a key measure.[186] BearingPoint also found that SBC's calculation logic for two maintenance and repair measures are inaccurate, including Performance Measurement 54.1 (Trouble Report Rate Net of Installation and Repeat Reports), which SBC concedes is a "key measure."[187] And BearingPoint's tests show that SBC's calculation logic is inaccurate with respect to two "key" provisioning measures (*i.e.,* Performance Measurements 56 (Percent Installations Completed Within Customer Requested Due Date) and 56.1 (Percent Installations Completed Within Customer Requested Due Date for Loop with LNP)).[188]

Similarly, in Exception 188, BearingPoint found that SBC's data flow diagrams (DFDs) and Data Element Maps (DEMs) are inaccurate.[189] These documents are essential because they are used by SBC's own analysts and programmers to manage the data underlying SBC's reported results. In Version 5 of Exception 188, issued on July 11, 2003, BearingPoint reported that, as of July 10, 2003, SBC's DFDs and DEMs for nine measurement groups and *90* measures are inaccurate – including SBC's documentation for a host of measures which SBC admits are key measures.[190] Version 5 of Exception 188 shows that SBC's technical documentation is

[185] BearingPoint Exception 187, Version 5, dated July 11, 2003.

[186] *See* SBC July 10 *Ex Parte*, Attach. Dv2 at 2 (listing PM 110 as a key measure).

[187] *See id.* (listing PM 54.1 as a key measure).

[188] *See* Moore/Connolly Decl. ¶ 99.

[189] *Id.* ¶ 102.

[190] BearingPoint Exception 188, Version 5, dated July 11, 2003. The nine measurement groups and 90 measures are: Directory Assistance Database (PMs 110, 111, 112, 113); Facilities Modification (PMs CW 11, WI 9); Interconnection Trunks (PMs 73, 74, 75, 76, 78); Local Number Portability (PMs 91, 92, 93, 95, 96, 97, 98, 99, 100, 101); Maintenance and Repair (PMs 37, 37.1, 38, 39, 40, 41, 42, 52, 53, 54, 54.1, 65, 65.1, 66, 67, 68, 69); Order (PMs 5, 6, 7, 7.1, 8, 10, 10.1, 10.2, 10.3, 10.4, 11, 11.2, 13, MI 2); Other (PMs CW 5, IN 1, MI 9, MI 13, MI 15, WI

inaccurate with respect to (1) 14 ordering metrics; (2) 17 maintenance and repair metrics; (3) 28 provisioning metrics, and (4) 10 local number portability metrics, and (5) seven other metrics – many of which SBC concedes are "key" metrics.[191] Critically, BearingPoint also has found that SBC's technical documentation is inaccurate with respect to Performance Measurement MI 13 (Percent Loss Notification Within One Hour of Service Order Completion) – another key measure,[192] and an area where SBC has had chronic deficient performance that has not been captured in its metrics.[193]

The deficiencies that BearingPoint has uncovered to date are neither trivial nor insignificant. Moreover, these defects in SBC's technical documents – which are critical components in the performance monitoring and reporting process and which affect metrics that SBC admits are key measures – illustrate that SBC's contentions regarding the purported reliability of its performance data are devoid of merit.

BearingPoint Has Found Errors That E&Y May Have Considered "Material," Even Under E&Y's Watered Down Standard Of Materiality. SBC's applications, both here and in Michigan, have demonstrated that SBC's so-called materiality standard is, in reality, a standardless approach.[194] Even so, BearingPoint has uncovered a number of errors that presumably would have met even E&Y's materiality standard. In addition, BearingPoint has identified a number of other errors that E&Y might have deemed material even under E&Y's

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1, WI 2); Pre-Order (PMs 2, MI 10, MI 16); and Provisioning (PMs 27, 28, 29, 30, 31, 32, 33, 35, 43, 44, 45, 46, 47, 48, 49, 50, 55, 55.1, 55.2, 55.3, 56, 56.1, 58, 59, 60, 61, 62, 63).

[191] Moore/Connolly Decl. ¶¶ 10-09.

[192] *Id.* ¶ 110.

[193] *See* Letter from Alan C. Geolot to Marlene H. Dortch, dated April 3, 2003, Attachment C, Moore/Connolly/Norris Reply Decl. (*Michigan I*) ¶¶ 112-18; Supplemental Moore/Connolly Decl. (*Michigan I*) ¶¶ 22-26.

[194] *See* Moore/Connolly Decl. ¶¶ 168-81.

weakened standards, although it is impossible to determine definitively because BearingPoint has not quantified the precise impact of these errors on SBC's performance results.

Some of the errors Bearing Point has uncovered would be material under any standard. For example, in Observation 643, BearingPoint found that SBC was improperly "truncating lower dateparts during time interval calculations in its MOR/TEL data" for certain metrics.[195] Although SBC, in its response to Observation 643, asserted that these errors were not material, BearingPoint reached a contrary conclusion, finding "an 8.26 percent difference between their results and Ameritech's published results for Performance Measurement 11."[196] Importantly, SBC's own analysis shows that E&Y did not address these data errors in its reports.[197] *See also* Moore/Connolly Decl. ¶¶ 157-150 (Observation 823, in which E&Y found a material error affecting PM 10, but failed to detect the same error for PM 11, while BearingPoint found the error in both metrics).

Similarly, BearingPoint has found other deficiencies that E&Y did not but that have caused SBC to restate its performance results, and so must be material. *See, e.g.*, Observation 792 (relating to failure to comply with the business rules governing Performance Measurement MI 9 (Percentage of Missing FOCs)).[198]

In addition, BearingPoint has found numerous other errors not found by E&Y that might also have met E&Y's materiality standard; it is not possible to determine definitively whether these errors would have met E&Y's materiality standard, however, because BearingPoint has not quantified the impact of these errors. *E.g.*, Observation 687 (excluding certain Jeopardy and

[195] *See id.* ¶ 135.
[196] BearingPoint Closed Observations Status Report, July 15, 2003, Observation 643, at 291.
[197] *See* Moore/Connolly Decl. ¶ 135.

Unsolicited FOCs from PM 10.4); Observation 856 (unlike E&Y, finding that SBC used two inconsistent data sources to obtain the data to calculate its performance results on loop makeup information); Observation 859 (unlike E&Y, finding that SBC had been improperly calculating the manual disaggregation for PM MI 14, which measures completion notifications on trouble tickets); Observation 864 (unlike E&Y, finding that SBC had failed to used the actual date of transmission when calculating performance results for PM 18, a measure of billing timeliness); Observation 866 (unlike E&Y, finding that SBC improperly excluded certain orders when calculating flow through results under PM 13 and 13.1); Observation 871 (unlike E&Y, finding that SBC improperly used a bill sample, instead of all bills, to calculate the results for PM 15, which measure the percentage of accurate and complete mechanized bills); Observation 872 (unlike E&Y, incorrectly excluding early and delayed coordinated hot cut orders in the denominator for PM 115.1, which measures provisioning trouble reports for such orders); Observation 873 (unlike E&Y, finding that SBC had applied improper exclusions to PM 115.1, which measures trouble reports on hot cut orders); Observations 874 & 875 (unlike E&Y, finding that SBC is incorrectly excluding certain provisioning trouble reports in connection with reporting on hot cut performance); Observation 878 (unlike E&Y, finding that SBC improperly counted orders instead of loops per order in Performance Measurement MI 3); Observation 880 (unlike E&Y, finding that SBC was improperly excluding certain hot cuts from performance measurements).[199] Each of these examples rebut conclusively any claim that the E&Y audit can be substituted for the completion of BearingPoint's testing. These examples show that, even if

[198] *See id.* ¶ 141.
[199] *See id.* ¶¶ 136-167.

the flawed materiality standard adopted by E&Y were applied, there could be no finding based on this record that E&Y has found and resolved all material errors in SBC's performance data.

Finally, Observation 876, which applies to the four states in SBC's application, as well as Michigan, represents a important example of the dangers in accepting the flawed materiality standard that SBC urges the Commission to accept. That observation reveals serious discrepancies between the values reported by SBC and BearingPoint. Specifically, BearingPoint found that it could not replicate SBC's July, August and September 2002 results for Performance Measurement MI 14 (Percent Completion Notifications Return Within "X" Hours of Completion of Maintenance Trouble Tickets). For example, with respect to SBC's July 2002 results for Michigan, BearingPoint reported values of 85 for the numerator and 86 for the denominator (or approximately 99%), while SBC reported values of 159 for the numerator and 160 for the denominator (or approximately 99%). Although this type of error would have been considered immaterial by E&Y, the fact that SBC's values were almost *double* that of BearingPoint's raises serious questions about SBC's internal systems.[200] Indeed, these huge discrepancies could result in serious errors, even if they did not result in a "material" error in the period tested. These defects in SBC's data illustrate the inherent risk of relying on the E&Y audit which employed a flawed materiality standard that necessarily resulted in the concealment of errors in SBC's data.[201]

In short, these examples demonstrate that the BearingPoint audit has uncovered and continues to uncover substantial defects in SBC's performance data that are conspicuously

[200] In SBC's response to BearingPoint Observation Report 876, it admits, "SBC's data file which was used for the July posted results contained missing data for some days and duplicate data for other days." SBC Response to Observation 876, at 2, dated July 14, 2003.

[201] *See* Moore/Connolly Decl. ¶¶ 164-65.

absent from E&Y's reports. SBC has yet to demonstrate that it has addressed and resolved all of the defects in its performance monitoring and reporting processes that have been uncovered to date. And because BearingPoint has not yet completed its testing, BearingPoint may well detect additional errors in SBC's performance data that will require additional corrective action. SBC, therefore, simply has not demonstrated that the performance data upon which it so heavily relies for checklist compliance are accurate, reliable, and complete.

C. The Commission Should Reject SBC's Ever-Changing Materiality Standards.

In an effort to diminish the importance of the huge volume of restatements of its performance results,[202] SBC, during the *Michigan 271 Proceeding*, contended that the material rate of restatement, rather than the sheer number of restatements, was of critical importance. SBC further asserted that, when viewed in that context, SBC's material rate of restatement is less than 1% of its reported results.[203]

AT&T demonstrated in its comments on SBC's initial and supplemental Michigan 271 applications that (1) SBC had relied upon different criteria for determining the materiality of errors for purposes of restatement,[204] (2) SBC's purported guidelines for restatement posted on its website are fundamentally flawed because they necessarily shield from public scrutiny errors in its reported results, and (3) because of SBC's ever-shifting conditions for determining the

[202] As AT&T pointed out in connection with SBC's Michigan 271 application, from May 2002 through March 2003, SBC restated data for 1,063 measures. Moore/Connolly/Norris Reply Decl. (*Michigan 271 Proceeding I*) ¶ 105. Furthermore, a number of measures have been restated for multiple reasons. From May 2002 through February 2003, SBC has issued 1,816 restatements to its performance data. *Id.* ¶ 106.

[203] *See* Moore/Connolly Decl. ¶ 169.

[204] Moore/Connolly Reply Decl. (*Michigan 271 Proceeding II*), ¶¶ 48-53.

materiality of errors warranting restatement, this Commission should not credit any claims that SBC makes regarding the purported impact of errors on its performance results.[205]

In this application, SBC responds by insisting that it has never changed its restatement guidelines, but its arguments border on the frivolous.[206] In the initial application, SBC stated that "[f]or this analysis, materiality is determined by the individual submeasure results moving from (a) 'pass' to 'fail'; (b) 'fail' to 'pass'; (c) 'indeterminate/no data' (no test possible) to 'fail'; or (d) 'fail' to 'indeterminate/no data'."[207] In its supplemental Michigan application, however, SBC stated that "[a]n assessment of materiality is based on whether the recalculated data would result (a) in a shift in the performance in the aggregation from a 'make' to a 'miss' condition or (b) in a further degradation of reported performance of more than 5% for measures that are in a 'miss' condition, provided there are at least 100 CLEC transactions in the sub-metric."[208] Plainly, these are two different standards.

SBC has not only changed its materiality standard whenever it suits its purpose, but it has also implemented ill-conceived conditions for restatement that permit SBC to mask errors in its performance results.[209] Worse yet, in a letter to AT&T dated July 15, 2003 on backbilling and billing reconciliation, SBC unveiled yet another set of misguided criteria that it imposes in determining the materiality of errors warranting restatement – conditions that demonstrate that SBC's so-called standard on materiality is actually standardless.[210] In this letter, SBC amplified the basis for its refusal to restate its performance data for Performance Measurement 17, taking

[205] *Id.* ¶ 53.
[206] Moore/Connolly Decl. ¶¶ 171-75.
[207] Ehr Reply Aff. (*Michigan 271 Proceeding I*) ¶ 49.
[208] Ehr Supp. Aff. (*Michigan 271 Proceeding II*) ¶ 85.
[209] *See* Moore/Connolly Reply Decl. (*Michigan 271 Proceeding II*) ¶¶ 48-53.

the position that restatement of its prior erroneous performance results is unnecessary because CLECs are already "aware" of SBC's substandard performance.[211] This position is plainly untenable. Clearly, this Commission, state regulatory bodies, and the CLECs cannot conduct a comprehensive analysis of SBC's actual performance if SBC posts inaccurate performance data which remain uncorrected. SBC also stated in its July 15 letter that restatement of its PM 17 results is not warranted because SBC has already "reached the cap provided for under the performance remedy plan for both AT&T and TCG."[212] This rationalization is equally specious. The remedy plan includes no provision that permits SBC to shield errors in its performance results whenever SBC reaches the cap.

Thus SBC's so-called materiality standard is, in reality, a standardless approach.[213] Moreover, SBC's ever-changing materiality standard governing restatement shows that: (1) SBC's purported commitment to accuracy in its performance results is disingenuous; (2) this Commission should not accept at face value any assertion that SBC makes regarding the impact of errors on its performance results; and (3) even the carrot of Section 271 approval has not proven to be a sufficient incentive for SBC to provide accurate performance reports.

D. SBC Has Not Demonstrated That Its Billing Data Are Accurate.

As demonstrated in Section III, there are substantial defects in SBC's billing systems that spawn inaccuracies in its wholesale bills and usage records. As a result, DOJ has declined to support SBC's pending Michigan 271 application based on its conclusion that "the CLECs make

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[210] Moore/Connolly Decl. ¶ 177-82.

[211] Letter from Thomas Harvey to Sarah DeYoung, dated July 15, 2003 at 2, attached as Exhibit 2 to Moore/Connolly Declaration.

[212] *Id.*

[213] Moore/Connolly Decl. ¶ 181.

credible allegations that they are continuing to receive wholesale bills for SBC that contain substantial inaccuracies," and "SBC does not offer any objective measure to demonstrate that its actual billing performance is improving."[214]

Moreover, SBC cannot properly rely on its commercial billing data as proof that its billing data are accurate, timely and complete. In order to provide meaningful information on the issue of whether nondiscriminatory access is being provided, performance measurements should be defined clearly and implemented properly, should not be subject to unilateral redefinition or manipulation by the BOC, should measure all transactions during the reporting period, and ensure that the measurements are sufficiently disaggregated so that "like-to-like" comparisons can be made.[215] In addition, because SBC is relying on its self-reported performance data to establish that it has fully satisfied its Section 271 obligations, SBC also bears the burden of establishing that its performance data are accurate.[216] SBC has not satisfied and cannot satisfy this basic test.

As DOJ has observed during its evaluation of SBC's Michigan 271 application, "the relevant Michigan performance metrics have limited utility in catching a wide range of potential billing errors; the most relevant metric, MI [sic] 14, is designed to determine whether bills are correctly being calculated according to SBC's billing tables, not whether the underlying information about the lines themselves is accurate."[217] Indeed, even E&Y conceded during hearings that Performance Measurement 14 does not adequately capture billing errors and

[214] DOJ Eval. (*Michigan 271 Proceeding II*) at 7 (footnote omitted).
[215] Moore/Connolly Decl. ¶ 184.
[216] *Id. BellSouth South Carolina 271 Order* ¶ 37 ("the BOC applicant retains at all times the ultimate burden of proof that its application is sufficient") (footnote omitted).
[217] DOJ Eval. (*Michigan 271 Proceeding II*) at 9 n.44.

problems.[218] Thus, SBC cannot reasonably rely on its commercial performance data to prove that it has provided nondiscriminatory access to its billing functions since its billing performance measurements do not completely and accurately capture SBC's actual performance in this area.[219]

The BearingPoint performance metrics audit provides further confirmation that SBC's billing data are untrustworthy. As discussed above, in Version 5 of Exception 187 issued on July 11, 2003, BearingPoint found that SBC's calculation logic underlying its reported results for Performance Measurement 18 – a key measure – is inaccurate.[220] Similarly, in Observation 864, issued on June 27, 2003, BearingPoint found that SBC's reported results for July, August and September 2002 for Performance Measurement 18 do not comply with the published business rules because SBC incorrectly uses the scheduled date of billing data transmission, instead of the actual date of transmission, when calculating its results.[221]

BearingPoint has found other errors in SBC's billing data. In Observation 871 issued on July 2, 2003. BearingPoint found that SBC's July, August and September 2002 performance data for Performance Measurement 15 (Percent of Accurate and Complete Formatted Mechanized Bills via EDI or BDT) do not comply with the business rules because SBC is using a *sample* of bills rather than total bills when calculating its performance results.[222] Noting that the business rules provide that the denominator of the calculation formula for Performance Measure 15

[218] *See* Moore/Connolly Decl. ¶ 185.
[219] *See id*.
[220] *Id.* ¶ 186.
[221] BearingPoint Observation 864, dated June 27, 2003.
[222] Moore/Connolly Decl. ¶ 188.

should consist of "total bills," BearingPoint found that SBC's "use of a random sample results in the non-reporting of results for CLECs whose bills were not a part of the sample population."[223]

Finally, BearingPoint's testing is far from complete and may uncover other defects in SBC's billing data.[224] On the current record, there is simply no sound basis for a finding that SBC's billing data are accurate and comply with the statute.[225]

E. The Performance Remedy Plans Will Not Deter Anti-Competitive Conduct.

The Commission has recognized that effective performance remedy plans "create a strong financial incentive for post-entry compliance with the section 271 checklist . . . ."[226] Although the Commission has not identified all of the criteria that a given performance remedy plan should satisfy in order to assure future checklist compliance, it has identified certain "important characteristics" that increase the likelihood that the enforcement mechanisms "will be effective in practice," including (1) potential liability that provides a "meaningful and significant incentive to comply with the designated performance standards"; (2) "clearly-articulated, pre-determined measures and standards," which encompass a "comprehensible range of carrier-to-carrier performance"; (3) "a reasonable structure designed to detect and sanction poor performance"; (4) a self-executing mechanism "that does not leave the door open unreasonably

[223] BearingPoint Observation 871, dated July 2, 2003.

[224] Moore/Connolly Decl. ¶ 190.

[225] SBC's contention that its provision of the raw data underlying its performance results to the CLECs constitutes another indicia of the reliability of its data rings hollow. *See* Moore/Connolly Decl. ¶¶ 191-192. Contrary to SBC's assertions, as AT&T explained in the Michigan 271 proceeding, in the past, SBC has not promptly provided AT&T with requested raw data and the raw data that SBC has provided is often incomplete or inaccurate.

[226] *New York 271 Order* ¶ 8.

to litigation and appeal"; and (5) "reasonable assurances that the reported data is accurate."[227] SBC's voluntary remedy plans flunk these guidelines.

1. SBC's Voluntary Remedy Plans Will Not Deter Anticompetitive Conduct.

SBC's voluntary remedy plans are flawed. Contrary to SBC's claims, the Illinois, Ohio and Wisconsin remedy plans on which it relies are not self-executing, which will "leave the door open unreasonably to litigation and appeal."[228] Specifically, Section 6.4 of the performance remedy plans in Illinois, Ohio and Wisconsin provides that any modifications to the performance remedy plan can only be effected with the mutual consent of the parties.[229] As a consequence, SBC has taken the position that it can veto any proposed changes to the performance remedy plan that are not to its liking.

The danger of such provisions is demonstrated by SWBT's conduct in Texas after Section 271 approval.[230] Although the Commission found that SWBT's Texas remedy plan was "reasonably self-executing,"[231] SWBT has continually thwarted changes to the remedy plan that are not to its liking. Specifically, it has adopted the stance that any changes to the performance remedy plan require its consent. This stance has carried over into its negotiations regarding a new interconnection agreement. Amazingly, SWBT has taken the position that when the current interconnection agreement expires in October 2003, "*SBC's 271 obligations, including the*

[227] *Id.* ¶ 433.
[228] *Id.*
[229] Moore/Connolly Decl. ¶ 198.
[230] *Id.* ¶¶ 199-213.
[231] *Texas 271 Order* ¶ 427.

obligation to provide performance measurements, will cease."[232] Even worse, SBC's proposed new interconnection agreement limits its performance reporting obligations to eight paltry measures, omitting several measures that are important to competitive entry, including metrics which SBC has conceded are key measures. Against this backdrop, SBC cannot legitimately contend that its Illinois, Ohio and Wisconsin performance remedy plans contain: (1) self-executing remedies which do not leave open the door increasingly to appeal; or (2) a remedial structure that will assure that it will continue to comply with its Section 271 obligations in the future.

2. SBC's Ohio Performance Plan Was Not Developed With The Participation And Input Of The CLECs.

The Commission has recognized that the "full and open participation by all interested parties" is important in the development of effective performance remedy plans.[233] The Public Utilities Commission of Ohio disregarded this Commission's guidance by simply adopting the Texas remedy plan as the performance plan for Ohio, without conducting any hearings or permitting any input from the CLECs.[234] Indeed, the PUCO ignored three CLEC requests to consider adoption of an Ohio-specific remedy plan. In doing so, the PUCO also failed to comply with its own procedures that it had established.[235] As a result, the Ohio remedy plan is not the result of a collaborative process, is dated (since it was based on the antiquated Texas remedy

[232] Electronic message from Stacey Maris (SBC) to Kathleen Whiteaker (AT&T), dated July 11, 2003 (emphasis added).
[233] *New York 271 Order* ¶ 8.
[234] Moore/Connolly Decl. ¶ 215.
[235] *Id.* ¶¶ 216-221.

plan which the Texas PUC has since substantially modified because of the inherent defects in the original plan), and is not tailored to Ohio.[236]

[236] *Id.* ¶¶ 222-227.

CONCLUSION

For the reasons stated above and in AT&T previous comments, reply comments, and ex parte submissions that are incorporated by reference herein, SBC's application for interLATA authority in Illinois, Indiana, Ohio, and Wisconsin should be denied.

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August 6, 2003

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of July, 2003, I caused true and correct copies of the forgoing Comments of AT&T Corp. to be served on all parties by mailing, postage prepaid to their addresses listed on the attached service list.

Dated: August 6, 2003
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